ARTICLE 3.1. ADJUSTED GROSS INCOME TAX

Rule 1. State Adjusted Gross Income Tax

45 IAC 3.1-1-1 Definition of adjusted gross income for individuals

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 1. Adjusted Gross Income for Individuals Defined. For individuals, "Adjusted Gross Income" is "Adjusted Gross Income" as defined in Internal Revenue Code § 62 modified as follows:

(1) Begin with gross income as defined in section 61 of the Internal Revenue Code.

(2) Subtract any deductions allowed by section 62 of the Internal Revenue Code.

(3) Make all modifications required by IC 6-3-1-3.5(a). *(Department of State Revenue; Reg 6-3-1-3.5(a)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1511; errata, 2 IR 1743)*

45 IAC 3.1-1-2 Definition of gross income for individuals

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-1-8

Sec. 2. "Gross Income" Defined for Individuals. Indiana residents must report all income as defined by § 61 of the Internal Revenue Code. Sources of income include, but are not limited to:

(1) Compensation for services, including fees, commissions and similar items
(2) Gross income derived from business
(3) Gains derived from dealings in property
(4) Interest
(5) Rents
(6) Royalties
(7) Dividends
(8) Alimony and separate maintenance payments
(9) Annuities
(10) Income from life insurance and endowment contracts
(11) Pensions
(12) Income from discharge of indebtedness
(13) Distributive share of partnership gross income
(14) Distributive share of taxable income from an electing small business corporation
(15) Income in respect of a decedent
(16) Income from an interest in an estate or trust

Nonresidents and part-year residents are also required to report gross income, as defined above, from all sources. These taypayers *[sic.]* are afforded a deduction for non-Indiana income as explained in Regulation 6-3-1-3.5(a)(050) *[45 IAC 3.1-1-5]*. *(Department of State Revenue; Reg 6-3-1-3.5(a)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1511; errata, 2 IR 1743)*

45 IAC 3.1-1-3 Allowed Internal Revenue Code deductions

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 3. Internal Revenue Code Section 62 Deductions in Arriving at Indiana Adjusted Gross Income for Individuals. The following deductions contained in Internal Revenue Code Section 62 are allowed in determining Indiana Adjusted Gross Income:

(1) Trade and business deductions
(2) Certain trade or business deductions of employees
(3) Long-term capital gains deduction (Internal Revenue Code § 1202)

(4) Losses from the sale or exchange of property (Internal Revenue Code § 161 and following)

(5) Deductions attributable to rents and royalties (Internal Revenue Code § 161 and following, § 212, and § 611)

(6) Certain deductions of life tenants and income beneficiaries of property (Internal Revenue Code § 167 and § 611)

(7) Pension, profit-sharing, annuity, and bond purchase plans of self-employed individuals [Internal Revenue Code § 401 (c)(1), § 404, and § 405 (c)]

(8) Moving expense deduction–Indiana residents may take a deduction against gross income for moving expenses incurred in a move into or within Indiana, provided that the requirements outlined in Section 217 of the Internal Revenue Code are met. If a taxpayer moves out of Indiana he is not allowed to take this deduction. An exception to this rule occurs when the taxpayer remains a resident of Indiana after he changes locations. For example, an Indiana resident who is in the military remains an Indiana resident regardless of where he is stationed. If such person's duty station is changed he may take this deduction for expenses incurred in the move.

(9) Pension, profit-sharing, annuity, and bond purchase plans of electing small business corporations [Internal Revenue Code § 1379 (b) (3)]

(10) Retirement savings [Internal Revenue Code § 219 and § 220]

(11) Certain portions of lump-sum distributions from pension plans taxed under Internal Revenue Code § 402 (e) [IRC § 402 (e) (3)]

(12) Penalties for premature withdrawal of funds from time savings accounts or deposits (IRC § 165)

(13) Alimony (Internal Revenue Code § 215) *(Department of State Revenue; Reg 6-3-1-3.5(a)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1511; errata, 2 IR 1743)*

45 IAC 3.1-1-4 Disallowed Internal Revenue Code deductions

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 4. Deductions from Federal Adjusted Gross Income Taken in Determining Federal Taxable Income Which Are Not Allowed in Determining Indiana Adjusted Gross Income for Individuals. Deductions under Internal Revenue Code Subchapter B, Parts VI and VII which are allowable in determining Federal taxable income (itemized deductions) are not allowable deductions in determining Indiana Adjusted Gross Income. *(Department of State Revenue; Reg 6-3-1-3.5(a)(040); filed Oct 15, 1979, 11:15 am: 2 IR 1512; errata, 2 IR 1743)*

45 IAC 3.1-1-5 Modifications to federal adjusted gross income to determine Indiana adjusted gross income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-1-17; IC 6-3-2-3.5; IC 6-3-2-4; IC 6-3-7-1

Sec. 5. Modifications to Adjusted Gross Income as Defined in Internal Revenue Code § 62 Which Are Required in Determining Indiana Adjusted Gross Income for Individuals. The following modifications to Federal Adjusted Gross Income as defined in Internal Revenue Code § 62 must be made in determining Indiana Adjusted Gross Income:

(1) Subtract income exempt from state taxation by the Constitution and/or statutes of the United States.

(a) Exempt interest:

All interest reported for federal tax purposes must be reported for Indiana Adjusted Gross Income Tax purposes. However, in determining taxable interest income for Indiana Adjusted Gross Income Tax purposes, a deduction may be taken for interest received on direct obligations of the federal government or its agencies, as required under 31 USC 742. Such deduction is not allowed for interest attributable to loans or other financial obligations on which the federal government is merely a guarantor or insurer.

Interest from the following United States Government obligations is deductible for Indiana Adjusted Gross Income Tax purposes. The list is not all inclusive:

Banks for Cooperatives
Central Banks for Cooperatives
Commodity Credit Corp.

District of Columbia
Export-Import Banks of the United States
Farm Credit Banks
Farmers Home Corp.
Federal Deposit Insurance Corp.
Federal Farm Loan Corp.
Federal Financing Banks
Federal Home Loan Banks
Federal Housing Administration
Federal Intermediate Credit Banks
Federal Intermediate Credit Corp.
Federal Land Banks Association
Federal Land Banks
Federal Savings and Loan Insurance Corp.
Home Owner's Loan Corp.
Joint Stock Land Banks
Maritime Administration
Production Credit Associations
Series E, F, G and H Bonds
Small Business Administration
U.S. Government Bonds
U.S. Government Certificates
U.S. Government Notes
U.S. Housing Authority
U.S. Treasury Bills
U.S. Maritime Commission
U.S. Possessions–obligations of Puerto Rico, Virgin Islands, etc.
U.S. Postal Service (Bonds)
Tennessee Valley Authority (Bonds only)

Interest and other earnings on these securities are taxable:

Building and Loan Associations
Credit Union Share Accounts
District of Columbia Armory Board
Federal National Mortgage Association*
Federal or State Savings and Loan Associations
Government National Mortgage Associations
Panama Canal Bonds
Phillipine Bonds

Also, interest received in the following instance is taxable:

(a) On refunds of federal income tax

(b) On interest-bearing certificates issued in lieu of tax exempt securities, such income losing its identity when merged with other funds

(c) On debentures issued to mortgages or mortgages foreclosed under the provisions of the National Housing Act

(d) On Promissory notes of a federal instrumentality

(e) On Federal Home Loan Time deposits

(f) On FSLIC secondary reserve prepayments

(g) On Government National Mortgage Association participation certificates and on Federal Home Loan Mortgage Corporation participation certificates in mortgage pools

(h) On U.S. Postal Service certificates and savings deposits

(i) On participating loans in the Federal Reserve System for member banks (Federal Funds)

(j) Farmer's Home Administration

*[NOTE: The Department has determined that interest paid by the Federal National Mortgage Association (FNMA) is subject to Indiana income taxation because FNMA has been a government sponsored private corporation since 1968. Thus, its obligations are not obligations of the federal government, and interest paid by FNMA will be considered taxable as of January 1, 1974. Further, where FNMA stock is traded on national stock exchanges, dividends from such stock are taxable.]

[NOTE: Although municipal bond interest (including interest on public housing authority bonds) and bond interest from United States Government obligations are excludable, the gain derived from the sale of tax-exempt municipal bonds and United States Government obligations held as investments is included in Gross Income. The gain to be reported for Indiana tax purposes is the gain reported for federal income tax purposes. Losses sustained are deductible, subject to capital loss limitations.]

(b) Income of nonresidents and part-year residents:

Income earned by a nonresident or part-year resident which is from an out-of-state source, which is earned while not a resident of Indiana, and which is received while not a resident of Indiana is exempt from Adjusted Gross Income Tax under the Constitution of the United States. Such income should be deducted from Federal Adjusted Gross Income in determining Indiana Adjusted Gross Income. Nonresidents and part-year residents excluding income under this subsection may take deductions pursuant to Regulation 6-3-1-3.5(a)(010) *[45 IAC 3.1-1-1]* only to the extent that the deductions were derived from income taxable to Indiana.

(2) Add back an amount equal to any deduction or deductions taken pursuant to Internal Revenue Code §62 for income taxes levied by any state of the United States, and for real estate and personal property taxes levied by any subdivision of any state of the United States. The add back does not include income taxes paid to cities and foreign countries. The add back is not required by individuals deducting these taxes as itemized deductions, since such deductions are not allowed in determining Federal Adjusted Gross Income.

Individuals with business-related automobile expenses must add back annual motor vehicle taxes taken as a deduction under Internal Revenue Code §63. However, such add-back does not include the minimum motor vehicle excise tax and registration fee.

(3) Subtract the $1000 personal exemption. In the case of a joint return, the exemption is limited to the lesser of $1000 or the Adjusted Gross Income of each spouse computed without regard to the modification for additional exemptions allowed under IC 6-3-1-3.5(a)(4). However, in no event will the exemption for each spouse be less than $500.

(4) Subtract $1000 for each exemption taken on the Federal return for taxpayer or spouse aged 65 or over, [Internal Revenue Code §151(c)]. Subtract $500 for each exemption taken on the Federal return for taxpayer's or spouse's blindness [IRC §151(d)]. Subtract $500 for each exemption taken on the Federal return for a qualified dependent [IRC §151(c)]. The taxpayer may also subtract $500 for the spouse if they are making separate returns, and if the spouse, for the calendar year in which the tax year of the taxpayer begins, has no gross income.

(5) Subtract taxes based on or measured by income which were paid to a political subdivision of a state other than Indiana. Such payment must be verified by filing with the taxpayer's return a withholding statement and a statement from the taxing authority indicating the taxes withheld and paid to such entity.

(6) Add back an amount equal to the ordinary income portion of a lump-sum distribution from a qualified pension or profit-sharing plan if the distribution is taxable under Internal Revenue Code §402(e).

(7) Subtract items included in Federal taxable income as a recovery of items previously taken as an itemized deduction on the Federal return.

(8) Subtract all amounts received as supplemental railroad retirement benefits which were not previously deducted.

(9) Prorate modifications 3, 4, and 5 *[subsections 3, 4, and 5 of this section]* above if the taxpayer is a nonresident or part-year resident of Indiana. These modifications must be reduced to an amount which bears the same ratio to the total allowable modifications as the taxpayer's Indiana Adjusted Gross Income before allowing modifications 3 and 4 *[subsections 3 and 4 of this section]* above bears to his total Adjusted Gross Income. However, married taxpayers residing in different states who elect to file separate returns are entitled to the same number of exemptions that each

claimed on their separate federal returns.

EXAMPLE: John Smith moves to Indiana from Ohio in June of 1978. His 1978 Adjusted Gross Income while living and working in Ohio was $10,000. His 1978 Adjusted Gross Income after moving to Indiana is $15,000. John is single, under 65, not blind, and he has one dependent. Before proration, he would be entitled to $1500 in exemptions from his Indiana Adjusted Gross Income (a $1000 personal exemption plus a $500 exemption for his dependent). However, he must prorate his exemptions on the ratio of

$$\frac{\text{Indiana Adjusted Gross Income.}}{\text{Total Adjusted Gross Income}}$$

Thus, he will be allowed $900 in exemptions from his Indiana Adjusted Gross Income

$$(\$1500 \times \frac{15{,}000}{25{,}000} = \$900)$$

EXAMPLE: Dick and Nancy Martin are a married couple living apart. Dick is a resident of California, while Nancy is an Indiana resident. The Martins have three children. On their separate federal returns, Dick claimed two of the children as exemptions, while Nancy claimed the other one. Therefore, on her Indiana income tax return, Nancy is entitled to $1500 in exemptions (a $1000 personal exemption plus a $500 exemption for the dependent claimed on her federal return) assuming she has at least $1000 in adjusted gross income.

(10) Military Personnel:

A deduction is allowed those Indiana residents who are members of the active and reserve units of the United States Armed Forces. Members of the Army, Navy, Air Force, Coast Guard, Marine Corps, Merchant Marine, Indiana Army National Guard, or Indiana Air National Guard may deduct, as a modification from adjusted gross income on the individual income tax return, an amount equal to the military compensation received or $2,000.00, whichever is less.

As a resident of Indiana, an individual or the individual's surviving spouse is allowed an adjustment up to $2,000.00 for retirement pay or survivor's benefits received as the result of the individual's active or reserve service in the armed forces of the U.S. provided that: (1) The individual or the individual's surviving spouse is at least sixty years of age on the last day of the taxable year, and (2) The Credit for the Elderly is not claimed. However, if a taxpayer has active duty, reserve and/or retirement pay in one tax year, in no case may the total deduction for military pay exceed $2000. If both the taxpayer and spouse receive military compensation, both would qualify for this deduction. Military withholding statements or retirement or survivor's benefit statements must be attached to the individual income tax return in order to claim this deduction. Military personnel on active or reserve duty who are afforded the $2000 deduction are limited in the amount of deductions related to military income, i.e., unreimbursed travel expenses, which they may take pursuant to Regulation 6-3-1-3.5(a)(010) *[45 IAC 3.1-1-1]*. The Taxpayer may take as a deduction for Indiana Adjusted Gross Income Tax purposes that percentage of his total deductions which is produced when the taxpayer's military income less the $2000 deduction is divided by his total military income.

EXAMPLE: Major Jones is an Indiana resident earning $40,000 in military pay during 1979. As a part of his duties, he is required to do some traveling for which he is not reimbursed. His 1979 traveling expenses are $3000. However, since he is eligible for the $2000 military pay deductions, these traveling expenses must be prorated on the ratio of

$$\frac{\text{military income - \$2000.}}{\text{military income}}$$

Thus, he is entitled to a deduction of $2850 for traveling expenses

$$(\$3000 \times \frac{38{,}000}{40{,}000} = \$2850)$$

(11) Subtract the taxpayer's share of income from a partnership subject to Adjusted Gross Income Tax, Gross Income Tax, or Supplemental Net Income Tax under IC 6-3-7-1(b).

(12) Subtract a civil service annuity adjustment calculated as follows:

From the first two thousand dollars ($2000) received during the taxable year from a federal civil service annuity that is included in Adjusted Gross Income under §62 of the Internal Revenue Code, subtract the total amount of railroad

retirement benefits and social security benefits received during the tax year.

In order to claim this deduction, the individual must be at least 62 years of age by the end of the tax year, and must not claim the Credit for the Elderly contained in IC 6-3-3-4.1 *[Repealed by P.L.25-1981, SECTION 9.]*.

EXAMPLE: Jane Johnson is retired on a federal civil service annuity. She is 64 years old, and does not claim the Credit for the Elderly. During 1980, Jane's annuity payments were $8400 and her social security benefits were $900. In calculating her civil service annuity adjustment, Jane will subtract her social security benefits of $900 from the first $2000 of her annuity. Therefore, Jane's adjustment is $1100 ($2000 - $900 = $1100).

EXAMPLE: George Black is retired on a federal civil service annuity. He is 78 years old, and does not claim the Credit for the Elderly. During 1979, George's annuity payments were $1800. He received $1500 in social security benefits, and $400 in railroad retirement benefits. In calculating his civil service annuity adjustment, George must subtract his social security benefits of $1500, and his railroad retirement benefits of $400 from his annuity. Therefore, George cannot claim the civil service annuity adjustment $1800 - $1500 - $400 is less than zero). Income of $1800 must be reported for Indiana tax purposes. *(Department of State Revenue; Reg. 6-3-1-3.5(a)(050); filed Oct 15, 1979, 11:15 am: 2 IR 1512; errata, 2 IR 1743)*

45 IAC 3.1-1-6 Net operating loss deduction for individuals

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-1-17; IC 6-3-2-3.5

Sec. 6. Net Operating Loss for Individuals. The following provisions pertain to the use of a Federal net operating loss deduction as it applies to an individual subject to the Indiana Adjusted Gross Income Tax Act. The amount of the net operating loss that may be carried back and forward for Indiana income tax purposes shall be that portion of the Federal net operating loss allocated to Indiana for the taxable year the operating loss is sustained.

The amount of the Indiana loss to be carried back and forward will be the Federal net operating loss after:

(1) All modifications required under IC 6-3-1-3.5 applicable to the net loss in the year the loss was incurred; and

(2) Apportionment as to the source in the case of nonresident individuals in the same manner that income for such nonresident individuals is required to be apportioned.

The net operating loss of an individual is computed in the same manner as the Adjusted Gross Income is computed for Indiana tax purposes except that:

(1) No operating loss deduction from a prior or succeeding year can be used in computing a current operating loss.

(2) Captial *[sic.]* losses are allowed only to the extent of the captial *[sic.]* gain. Nonbusiness captial *[sic.]* losses cannot exceed nonbusiness capital gain even though you have an excess of business capital gains over business capital losses.

(3) In the event that the net operating loss carried back or carried forward exceeds the taxable adjusted gross income of the year to which it is carried, the 50% capital gain deduction for the excess of net long term capital gain over net short term capital loss cannot be considered.

(4) Personal exemptions and exemptions for dependents cannot be claimed when computing the loss.

(5) Nonbusiness deductions may not be used–those deductions used in lieu of the standard deduction for Federal tax purposes. Nonbusiness deductions for Indiana include a self-employed individual's contributions on his own behalf to a retirement plan under which he is covered. This amount of contribution must be deducted from dividends, interest and other miscellaneous income. Generally, other nonbusiness expenses (itemized deductions) cannot be used to offset nonbusiness income in determining the Indiana net operating loss.

Example 1 will present calculations used in determining the carryback and carryforward of losses for Indiana Adjusted Gross Income Tax purposes. See Example 1.

In applying for refund as a result of a net operating loss, the loss must be fully explained on an attached schedule. Federal Schedule 1045 may be used as a supporting document; however, all modifications required in determining Indiana adjusted gross income must be contained in the schedule. Adjustments also must be made for credit for the elderly (retirement income credit if applicable), and credit for taxes paid to other states where applicable.

EXAMPLE 1
NET OPERATING LOSS

	1973	1974	1975	1976	1977
Salaries	5,000.00	5,000.00	2,000.00	8,000.00	2,000.00
Interest less U.S. Govt. Bd. Interest	300.00	200.00	400.00	700.00	500.00
Schedule C–Income (Loss)	8,000.00	4,000.00	9,000.00	(20,000.00)	(35,000.00)
Schedule F–Income (Loss)	3,000.00	3,000.00	2,000.00	(1,500.00)	(10,000.00)
Tax Add Back	1,200.00	2,300.00	1,800.00	2,500.00	3,000.00
Schedule D–Net nonbusiness Long Term Capital Gain (Loss) Before 50% Exclusion	3,000.00	(1,000.00)			6,000.00
Business Net Capital Gain or (Loss)	(4,000.00)	1,000.00	2,000.00	3,000.00	(7,000.00)
50% Capital Gain Deduction	(1,500.00)	–	(1,000.00)	(1,500.00)	(3,000.00)
Self-employed Retirement Plan (a) (Reduces nonbusiness Income)	(200.00)	(200.00)	(200.00)	(200.00)	(300.00)
Adjusted Gross Income per IT-40	14,800.00	14,300.00	16,000.00	(9,000.00)	(43,800.00)
Adjustments in computing net operating loss (loss year only) Add back 50% capital gain deduction				1,500.00	3,000.00
Adjusted gross income to be considered in absorbing Individual's Net Operating Loss	14,800.00	14,300.00	16,000.00	(7,500.00)	(40,800.00)
Net Operating Loss Deduction					
1976 carryback to 1973	(7,500.00) (b)				
1977 carryback to 1974		(40,800.00) (c)			
1977 carryback to 1975–Note 1			(25,500.00) (d)		
Adjusted gross income after carryback	7,300.00	-0-	-0-	-0-	-0-

Note 1: Carryover of 1977 loss to 1975		Note 2: Carryover to 1978	
Adjusted gross income per 1974 return	$14,300.00	Adjusted gross income per 1975 return	$16,000.00
Add nonbusiness capital loss	1,000.00	Add 50% Capital Gain Deduction	1,000.00
	15,300.00		17,000.00
1977 loss	(40,800.00)	Carryover from 1974–Note 1	(25,500.00)
Carryover to 1975	(25,500.00)	Carryover to 1978	(8,500.00)

Key: (a) This amount must be used to reduce nonbusiness type income–interest, dividends, etc.
(b) The amount to be carried to the 1973 Amended Return and reported as other losses.
(c) Carry to 1974 Amended Return
(d) Carry to 1975 Amended Return

(Department of State Revenue; Reg 6-3-1-3.5(a)(060); filed Oct 15, 1979, 11:15 am: 2 IR 1515; errata, 2 IR 1743)

45 IAC 3.1-1-7 Allocation of income among states; reciprocity

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-1-17; IC 6-3-2-2; IC 6-3-2-3.5; IC 6-3-5-1

Sec. 7. Allocation and Apportionment of Unearned Income for Individuals. (1) Interest, dividends, except earnings from Subchapter S corporations, rents and royalties are generally taxed by the state of legal residence.

(2) Income from a pension, annuity, profit-sharing, or stock-option plan that meets the qualifications of the Internal Revenue Code is taxed by the state of legal residence. Lump sum distributions from qualified plans are taxed by the state which, at the time of the distribution, is the taxpayer's legal residence. Whether a plan meets the qualifications of the Internal Revenue Code is determined by the Internal Revenue Service.

(3) Deferred compensation, other than that from a qualified retirement plan as described above, is directly attributable to services performed, and is taxed by the state where the services were performed.

(4) Accumulated vacation, bonus, serverance *[sic.]* and sick pay is directly attributable to services performed and is taxed by the state where the services were performed.

(5) Taxpayers with income attributable to services performed in the past (3 & 4 *[subsections 3 and 4 of this*

section] above), who performed those services in more than one state, must report this income for Indiana tax purposes if Indiana was the last state in which the taxpayer was employed prior to retirement.

(6) Indiana residents with income from partnerships and Subchapter S corporations are subject to Adjusted Gross Income Tax on their distributive share of partnership or corporate income. Nonresidents with income from partnerships and Subchapter S corporations doing business in the state are also subject to Adjusted Gross Income Tax on their distributive shares of income. However, such income is apportioned to this state using the 3-factor formula outlined in IC 6-3-2-2(b) if the partnership or Subchapter S corporation is doing business both within and without the state.

(7) Taxpayers with any of the types of income outlined in this regulation *[45 IAC 3.1-1-7]* who are taxed on such income by both Indiana and another state may be allowed a credit against their Indiana Adjusted Gross Income Tax liability for taxes paid to the other state. Such creidt *[sic.]* will be given only if the taxpayer meets the requirements of Regulations 6-3-3-3(a)(010) *[45 IAC 3.1-1-74]* or 6-3-3-3(b)(010) *[45 IAC 3.1-1-77]*.

(8) Reciprocity will apply in the usual manner to deferred compensation that consists of wages. [See Regulation 6-3-5-1(010) *[45 IAC 3.1-1-115]*.] All income other than wages such as pension, annuity, profit-sharing, and stock-option income is not covered by reciprocal agreements with other states. *(Department of State Revenue; Reg 6-3-1-3.5(a)(070); filed Oct 15, 1979, 11:15 am: 2 IR 1516; errata, 2 IR 1743)*

45 IAC 3.1-1-8 Definition of adjusted gross income for corporations

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-1-17; IC 6-3-2-2; IC 6-3-2-3.5

Sec. 8. "Adjusted Gross Income" for Corporations Defined. "Adjusted Gross Income" with respect to corporate taxpayers is "taxable income" as defined in Internal Revenue Code–section 63 with three adjustments:

(1) Subtract income exempt from tax under the Constitution and Statutes of the United States. [See Regulation 6-3-1-3.5(a)(050)(a) *[45 IAC 3.1-1-5(a)]*.]

(2) Add back deductions taken pursuant to Interanl *[sic.]* Revenue Code-section 170 (Charitable contributions);

(3) Add back deductions taken pursuant to Internal Revenue Code-section 63 for:

(a) Taxes based on or measured by income and levied at the state level. For purposes of this subsection, the Indiana Gross Income Tax is a state tax measured by income and must be added back (see Miles v. Department of Treasury, 209 Ind. 172 (1935));

(b) Property taxes levied by a political subdivision of any state; and

(c) Indiana motor vehicle excise taxes, except for that portion of the tax not considered an ad valorem tax.

(Department of State Revenue; Reg 6-3-1-3.5(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1517; errata, 2 IR 1743)

45 IAC 3.1-1-9 Allowance of corporate net operating loss; modifications

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-2-2

Sec. 9. Corporate Net Operating Loss. The net operating loss as described in Internal Revenue Code §172 is an allowable deduction for corporations in computing Indiana Adjusted Gross Income. The amount of the loss which may be deducted is the Federal net operating loss after:

(1) All modifications required under IC 6-3-1-3.5(b); and

(2) After apportionment, if the taxpayer is doing business in more than one state and is required to apportion his income.

The computation of the loss is subject to the following exceptions, limitations, and additions:

(1) For those corporations subject to apportionment, nonbusiness deductions which are attributable to nonbusiness income are allowed only to the extent that such nonbusiness deductions were attributable to Indiana nonbusiness income.

(2) There shall be included in computing gross income only the net amount of exempt interest (i.e., U.S. Government bond interest decreased by the amount of interest paid or accrued to purchase or carry investments earning such interest).

(3) In the case of a taxpayer whose entire net income is assigned to Indiana (without apportionment) under IC 6-3-

2-2 the net operating loss of such business is determined in the same manner as if the entire gross income were assignable to the State and the entire amount of the net operating loss is carried back or forward as a deduction in computing Indiana adjusted gross income.

(4) Losses connected with income-producing activities, the income from which is not required to be either assigned to this State or included in computing taxable net income, are not allowed in computing a net operating loss.

(5) If a taxpayer's business is conducted partly within and partly without the State, and a net operating loss is sustained, the net operating loss is carried back or forward and deducted in arriving at Indiana adjusted gross income subject to apportionment. The amount by which Indiana adjusted gross income is reduced by reason of the net operating loss deduction may not exceed the amount of net operating loss deduction determined to be from Indiana sources.

The computation of a corporate net operating loss pertains only to the determination of the taxpayer's Adjusted Gross and Supplemental Net Income Tax liability. The loss cannot be taken in computing the Indiana Gross Income Tax. Moreover, taxpayers must irrevocably elect, by the due date of the annual return (including extensions of time for filing) for the tax year in which the loss is sustained, the same carryback and carryforward treatment of the loss for Adjusted Gross Income Tax purposes as was elected for Federal tax purposes.

Any refund of adjusted gross income tax due as a result of a net operating loss cannot be reduced below the amount of gross income tax due. In applying for a refund as a result of a net operating loss, Schedule IT-20NOL is required, with a complete explanation. A taxpayer must claim a refund for a net operating loss carryback within three years of the original due date of the return for the loss year. If a taxpayer fails to claim a carryback loss within the time prescribed, the effect of the loss must be computed by the proper carryback even though no refund will be allowed in a situation where the taxpayer has other losses in years still within the statute of limitations. For a net operating loss carryforward, a taxpayer must claim a refund within the time prescribed by Regulation 6-3-6-4(a)(010). Only the unused portion of the net operating loss after the proper carryback or carryforward will be available for the refund if the statute of limitations has expired to claim the original loss. Adjustments will also be required in re-determining the credit for contributions to Indiana colleges and universities. (See Example 1).

When a corporate merger takes place or a new subsidiary is included in a consolidated Indiana Adjusted Gross Income Tax return, the Department follows the guidelines of the Internal Revenue Code as to the treatment of net operating losses sustained by any of the corporations involved. For requirements of filing consolidated returns, see Regulation 6-3-4-14(010)-(030) *[45 IAC 3.1-1-110–45 IAC 3.1-1-112]*.

Example 1

Corporations Filing Indiana Income Tax Returns

Adjusted Gross Income Tax Computation

1.	Net federal taxable income (loss) (before net operating loss or special deductions)	$	(85,000)
2.	Adjustments, if any (other than Indiana net operating loss deductions)		-0-
3.	Net taxable income (loss) after adjustments	$	(85,000)
4.	Add back:		
	(a) All state income taxes . .	$	5,000
	(b) All real estate and personal property taxes . . .	$	5,000
	(c) All charitable contributions, gifts, etc. . . .		-0-
5.	Total lines 4 (a), (b), and (c)	$	10,000
6.	Deduct interest of U.S. government obligations included on federal return	$	5,000

7.	Subtotal (line 3 plus line 5 less line 6) (If you do not apportion enter here and on line 13; if you do apportion, continue on the next line)	$ (80,000)	
8.	Enter net nonbusiness income from all sources	$ 13,000	(a)
9.	Net taxable business income (Line 7 less 8)	$ (93,000)	
10.	Apportionment percentage	50%	
11.	Business income apportioned to Indiana	$ (46,500)	
12.	Indiana nonbusiness income	$ 13,000	
13.	Total Indiana adjusted gross income (loss) (line 11 plus line 12) (before Indiana net operating loss carryback/ carryforward deduction)	$ (33,500)	(b)
14.	Deduct apportioned Indiana net operating loss carryback/carry-forward	-0-	(c)
15.	Total Indiana adjusted gross income (loss)	$ (33,500)	

(a) Interest income assumed to be $15,000 in ths example, with $2,000 of nonbusiness expenses.

(b) This figure is the Indiana net operating loss for the current year which can be applied against the income in the three preceeding *[sic.]* years and five succeeding years. Effective January 1, 1977, a taxpayer may irrevocably elect at the time the return is due for the loss year to forego a carryback and merely carryforward the loss pursuant to the Internal Revenue Code. All taxpayers will be required to make the same election for federal income tax purposes as for State income tax purposes.

(c) On this line you would deduct (or add to the current year's loss) any apportioned Indiana carryback/carryforward from other taxable years.

(Department of State Revenue; Reg 6-3-1-3.5(b)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1517; errata, 2 IR 1743)

45 IAC 3.1-1-10 Definition of adjusted gross income for fiduciaries

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-1-17

Sec. 10. Fiduciary Adjusted Gross Income Defined. Adjusted gross income shall mean "taxable income" as defined in Section 641 (b) of the Internal Revenue Code, reduced by interest on U.S. Government obligations and other income exempt from taxation under the Adjusted Gross Income Tax Act and the United States Constitution. Accordingly, for purposes of the Adjusted Gross Income Tax Act, adjusted gross income will be equal to the net taxable income required to be reported on the U.S. Fiduciary Income Tax Return (Form 1041) reduced by exempt income as defined in this regulation *[45 IAC 3.1-1-10]*. *(Department of State Revenue; Reg 6-3-1-3.5(c)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1518; errata, 2 IR 1743)*

45 IAC 3.1-1-11 Exemptions for trusts and estates

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 11. Exemptions. As *[sic.]* estate can deduct a personal exemption of $600. A trust which is required to distribute all of the income currently, a simple trust, is allowed an exemption of $300. All other trusts, complex trusts, can deduct a $100 exemption. If final distribution of assets has been made during the year, all income of the estate or trust must be reported to the beneficiaries without reduction for the amount claimed for the exemption. *(Department of State Revenue; Reg 6-3-1-3.5(c)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1518; errata, 2 IR 1743)*

45 IAC 3.1-1-12 Resident and nonresident trusts and estates

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 12. Determination of Indiana Taxable Adjusted Gross Income for Fiduciaries. For purposes of the taxes imposed upon the income of estates or trusts and paid by the fiduciary thereof, estates and trusts are classified as either resident or nonresident. The residence of an estate or trust is the place where it is administered.

Resident estates or trusts are taxable on all income regardless of where earned. Deductions are limited to those deductions taken and allowable on the Federal Fiduciary Return, Form 1041.

Nonresident estates and trusts are taxable in Indiana on all income derived from Indiana sources. Income derived from sources within Indiana is divided into business and nonbusiness income.

(A) Business income is income derived from transactions in the regular course of the taxpayer's trade or business, including income from intangibles where intangibles are an integral part of that business. Business income from a business located in Indiana would be included as income for a nonresident estate or trust. Such income would include rents or leases from property located in Indiana.

(B) Nonbusiness income would include all other income other than business income. Such income shall be considered as derived from sources within Indiana if the property from which the income is derived has a situs in Indiana, and the property does not have a situs in any other state and the taxpayer has a commercial domicile in Indiana, or in the case of patent, or copyright royalties, the patent or trademark is either utilized in Indiana or utilized in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in Indiana. *(Department of State Revenue; Reg 6-3-1-3.5(c)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1518; errata, 2 IR 1743)*

45 IAC 3.1-1-13 Deduction for distribution from estate or trust

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 13. Distribution Deduction of Distributable Net Income from A Fiduciary. A deduction for the distribution of net income is allowed for Indiana adjusted gross income tax purposes in the same manner as provided under section 651 and 661 of the Federal Internal Revenue Code. In the case of a "simple trust," the trustee is required to distribute all of its income currently, whether or not he actually does so. The distribution deduction is mandatory.

The distribution deduction as described in section 651 and 661 of the Internal Revenue Code is defined to mean that portion of the distributable net income required to be distributed to the beneficiaries.

When an estate or trust is to be closed, or is required to distribute current income during the taxable year and there is distributable net income, the distribution deduction must be taken and the distributable net income allocated to the beneficiary's Individual Adjusted Gross Income Tax Return, Form IT-40. *(Department of State Revenue; Reg. 6-3-1-3.5(c)(040); filed Oct 15, 1979, 11:15 am: 2 IR 1519; errata, 2 IR 1743)*

45 IAC 3.1-1-14 Report of distribution; allocation by nonresident estate or trust

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-2-2

Sec. 14. Allocation of Distributable Net Income Distributed to Beneficiaries. If an estate or trust must use the distribution deduction, then such estate or trust must complete the supplemental schedule of Form IT-41 (Schedule B).

The fiduciary will allocate the distributable net income to the beneficiaries and will show the character of the

distributable net income required to be distributed.

If there is a distribution of distributable net income, the fiduciary will give the names, addresses and social security numbers of the beneficiaries.

The fiduciary will also show the amount of income required to be distributed by reason of a trust instrument.

Nonresident trusts and estates operating businesses in Indiana will allocate and apportion their income using the 3-factor formula outlined in IC 6-3-2-2(b). *(Department of State Revenue; Reg 6-3-1-3.5(c)(050); filed Oct 15, 1979, 11:15 am: 2 IR 1519; errata, 2 IR 1743)*

45 IAC 3.1-1-15 Application of excess deductions of estate or trust

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 15. Allocation of Excess Deductions. After the fiduciary of a trust or an estate in the year of termination has applied the allowable deductions against the income to which the deductions were directly attributable, he may apply the excess of such deductions against any item of gross income subject to the following limitations.

Deductions allocable to tax exempt income must be used only against tax exempt income. Any excess of such allocated deductions cannot be used to offset taxable income. Therefore, deductions allocable to tax exempt income will not be taken on Form IT-41.

Excess deductions other than deductions from business income, cannot be extended to the beneficiary in the year of termination since these deductions are itemized deductions for Federal tax purposes and not allowable when filing the Individual Income Tax Return. *(Department of State Revenue; Reg 6-3-1-3.5(c)(060); filed Oct 15, 1979, 11:15 am: 2 IR 1519; errata, 2 IR 1743)*

45 IAC 3.1-1-16 Final account and certificate of clearance of fiduciary

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 16. Certificate of Clearance. A fiduciary entity opened before June 30, 1963, must file with the Fiduciary Section of the Indiana Department of Revenue a final accounting, showing proof of payments prior to July 1, 1963, and a Form IT-41 tax return, in order to receive a certificate of clearance.

If a fiduciary entity is opened after June 30, 1963, the fiduciary will not receive a certificate of clearance and will not submit to the Department a final accounting. However, the fiduciary shall allege in his final accounting that "an adjusted gross income tax return has been properly filed."

If the fiduciary was subject to a tax, then he should allege in his final acccounting *[sic.]* that "any and all taxes due or assessable by the Income Tax Division of the Indiana Department of Revenue against the fiduciary has been paid." *(Department of State Revenue; Reg 6-3-1-3.5(c)(070); filed Oct 15, 1979, 11:15 am: 2 IR 1519; errata, 2 IR 1743)*

45 IAC 3.1-1-17 Net operating losses and capital losses for fiduciaries and beneficiaries

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 17. Net Operating Losses and Capital Losses for Fiduciaries. For Adjusted Gross Income Tax purposes, fiduciaries and beneficiaries may use the same carryback and carryforward provisions for net operating losses and capital losses as provided in the Internal Revenue Code subject to the applicable modifications of the Indiana Adjusted Gross Income Tax Act. *(Department of State Revenue; Reg 16-3-1-3.5(c)(080); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)*

45 IAC 3.1-1-18 Charitable contributions of trust estate; exempt trusts

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5

Sec. 18. Charitable Contribution Deduction. The fiduciary shall be allowed to deduct without limitation any amount of the gross income of the estate or trust which by the terms of the will or instrument creating the trust, is required to be paid or permanently set aside during the taxable year for a purpose specified in section 170(c) of the Internal Revenue Code, or is to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance or operation of a public cemetery not operated for profit.

In the case of a trust, the charitable contribution deduction will be subject to the limitations of section 681 of the Internal Revenue Code.

Trusts which are exempt from Federal income tax under section 501 of the Internal Revenue Code are also exempt from taxation under the Indiana Adjusted Gross Income Tax Act. *(Department of State Revenue; Reg 6-3-1-3.5(c)(090); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)*

45 IAC 3.1-1-19 Definition of gross income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-8

Sec. 19. "Gross Income" Defined. "Gross income" for Adjusted Gross Income Tax purposes is gross income as defined in Internal Revenue Code § 61. See Regulation 6-3-1-3.5(a)(020) *[45 IAC 3.1-1-2]*. *(Department of State Revenue; Reg 6-3-1-8(010); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)*

45 IAC 3.1-1-20 Definition of corporation

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-10

Sec. 20. "Corporation" Defined. The term "corporation" is used in the Act in a general sense and includes any form of businesss *[sic.]* association whose characteristics more nearly resemble those of a corporation than those of a trust or partnership, including corporations, partnerships with corporate members, associations, joint stock companies, real estate investment trusts, not-for-profit associations, business trusts and Massachusetts trusts. Proprietorships or partnerships formerly taxable under Internal Revenue Code § 1361 are now taxed as individuals. Internal Revenue Code § 1361 was repealed in 1969; thus proprietorships and partnerships taxable under this subsection are no longer included within the definition of "corporation."

Any receiver, trustee, conservator, liquidator, or other fiduciary controlling any of the above is also a "corporation" under the Act. *(Department of State Revenue; Reg 6-3-1-10(010); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)*

45 IAC 3.1-1-21 Definition of resident

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-12

Sec. 21. "Resident" Defined. An Indiana resident is:

(a) Any individual who was domiciled in Indiana during the taxable year, or

(b) Any individual who maintains a permanent place of residence in this state and spends more than 183 days of the taxable year within this state; or

(c) Any estate of a deceased person defined in (a) or (b) *[subsections (a) or (b) of this section]*, or

(d) Any trust which has a situs within this state.

(Department of State Revenue; Reg 6-3-1-12(010); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)

45 IAC 3.1-1-22 Definition of domicile

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-12

Sec. 22. "Domicile" Defined. For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

(1) Purchasing or renting residential property
(2) Registering to vote
(3) Seeking elective office
(4) Filing a resident state income tax return or complying with the homestead laws of a state
(5) Receiving public assistance
(6) Titling and registering a motor vehicle
(7) Preparing a new last will and testament which includes the state of domicile. *(Department of State Revenue; Reg 6-3-1-12(020); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)*

45 IAC 3.1-1-23 Special cases of residency

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-12

Sec. 23. Residency As It Affects Tax Liability. (1) Taxpayer Moving to Indiana

When a taxpayer moves to Indiana and becomes a resident and/or domiciliary of Indiana during the taxable year, Indiana will not tax income from sources outside Indiana which the taxpayer received prior to becoming an Indiana domiciliary. Indiana will, however, assess adjusted gross income tax on all taxable income after the taxpayer becomes an Indiana resident.

(2) Taxpayer Moving from Indiana

Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable.

(3) Nonresident Citizens

An individual from Indiana who is permitted to file Federal income tax returns as a nonresident citizen is considered as being domiciled in Indiana and his income taxable as a resident citizen, if he maintains a place of abode in Indiana immediately prior to residing in a foreign country as a nonresident citizen of the United States, and has not permanently established his domicile in a foreign country or in another state.

The fact that ordinary rights of citizenship, including voting at public elections are present but not exercised, shall not prevent a person from being classified as a resident if he meets the other tests set out in this regulation *[45 IAC 3.1-1-23]*.

(4) Part-Time Resident Individuals

Persons residing in Indiana but living part of the year in other states or countries will be deemed residents of Indiana unless it can be shown that the abode in the other state or country is of a permanent nature. Domicile is

not changed by removal therefrom for a definite period or for a particular purpose. A domicile, once obtained, continues until a new one is acquired.

(5) Military personnel

Indiana residents who become members of the military service remain Indiana residents regardless of their geographical assignments. Military members can change their legal residence only by filing DD Form 2058, State of Legal Residence Certificate.

(Department of State Revenue; Reg 6-3-1-12(030); filed Oct 15, 1979, 11:15 am: 2 IR 1520; errata, 2 IR 1743)

45 IAC 3.1-1-24 Definition of nonresident

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-13

Sec. 24. "Nonresident" Defined. A nonresident of Indiana is any individual, estate, trust, or other entity not included in the definition of "Resident" given in Regulation 6-3-1-12(010) *[45 IAC 3.1-1-21]*. *(Department of State Revenue; Reg 6-3-1-13(010); filed Oct 15, 1979, 11:15 am: 2 IR 1521; errata, 2 IR 1743)*

45 IAC 3.1-1-25 Tax liability of nonresident

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-13; IC 6-3-2-2

Sec. 25. Nonresident's Indiana Adjusted Gross Income Tax Liability. All persons who are not residents of Indiana are required to report that portion of their entire income directly or constructively from or attributable to business, activities or any other source within Indiana, with the exception of nonresident members of the armed forces receiving compensation for military duty in Indiana. These latter persons will not be subject to the adjusted gross income tax on their military pay. A nonresident must include on his tax return all gross income received from a business, activities or any other source in Indiana whether taxable or not. In order to avail himself of the deduction of non-taxable income, the nonresident must first include the non-taxable portion of his income in the total gross income figure.

In order to qualify as a nonresident, the taxpayer shall submit proof, upon demand by the department, of having indicated his bona fide intention to reside permanently elsewhere before the last day of the taxable year.

Such person changing his domicile during a taxable year may also be required to furnish evidence of compliance with the requirements of the other state with respect to taxation and the qualification as a resident citizen thereof. *(Department of State Revenue; Reg 6-3-1-13(020); filed Oct 15, 1979, 11:15 am: 2 IR 1521; errata, 2 IR 1743)*

45 IAC 3.1-1-26 Definition of person

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-14

Sec. 26. "Person" Defined. Statutory definition of "person" is used synonymously with the Act. *(Department of State Revenue; Reg 6-3-1-14(010); filed Oct 15, 1979, 11:15 am: 2 IR 1521; errata, 2 IR 1743)*

45 IAC 3.1-1-27 Definition of taxpayer

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-15

Sec. 27. "Taypayer" *[sic.]* Defined. The term "taxpayer" means any person or corporation subject to taxation under these Regulations *[45 IAC]*. *(Department of State Revenue; Reg 6-3-1-15(010); filed Oct 15, 1979, 11:15 am: 2 IR 1521; errata, 2 IR 1743)*

45 IAC 3.1-1-28 Taxable year

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-16

Sec. 28. "Taxable Year" Defined. The term "taxable year" means the taxable year of the taxpayer as shown on the return required to be filed or filed pursuant to the Internal Revenue Code. When the Internal Revenue Code requires no return to be filed, the taxable year will be the calendar year. *(Department of State Revenue; Reg 6-3-1-16(010); filed Oct 15, 1979, 11:15 am: 2 IR 1521; errata, 2 IR 1743)*

45 IAC 3.1-1-29 Definition of business income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-20

Sec. 29. "Business Income" Defined. "Business Income" is defined in the Act as income from transactions and activity in the regular course of the taxpayer's trade or business, including income from tangible and intangible property if the acquisition, management, or disposition of the property are integral parts of the taxpayer's regular trade or business.

Nonbusiness income means all income other than business income.

The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, non-operating income, etc., is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is "business income" or "nonbusiness income" is the identification of the transactions and activity which are the elements of a particular trade or business. *(Department of State Revenue; Reg 6-3-1-20(010); filed Oct 15, 1979, 11:15 am: 2 IR 1521; errata, 2 IR 1743)*

45 IAC 3.1-1-30 Trade or business construed

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-20

Sec. 30. Whether An Activity Is A "Trade or Business". For purposes of determining whether income is derived from an activity which is in the regular course of the taxpayer's trade or business, the expression "trade or business" is not limited to the taxpayer's corporate charter purpose of its principal business activity. A taxpayer may be in more than one trade or business and derive business therefrom depending upon but not limited to some or all of the following:

(1) The nature of the taxpayer's trade or business.

(2) The substantiality of the income derived from activities and transactions and the percentage that income is of the taxpayer's total income for a given tax period.

(3) The frequency, number, or continuity of the activities and transactions involved.

(4) The length of time the property producing income was owned by the taxpayer.

(5) The taxpayer's purpose in acquiring and holding the property producing income. *(Department of State Revenue; Reg 6-3-1-20(020); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)*

45 IAC 3.1-1-31 Definition of nonbusiness income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-21

Sec. 31. "Nonbusiness Income" Defined. Statutory definition of "nonbusiness income" is used synonymously with the Act. *(Department of State Revenue; Reg 6-3-1-21(010); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)*

45 IAC 3.1-1-32 Definition of commercial domicile

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-22

Sec. 32. "Commercial Domicile" Defined. The term "commercial domicile" is defined in the Act as "the principal place from which the trade or business of the taxpayer is directed or managed." Commercial domicile is not necessarily in the state of incorporation. A corporation that is incorporated in a state, but that has little or no activity in that state, has not established a commercial domicile there.

Each corporation has one, and only one, commercial domicile. Generally, it is where the executive authority of the business is concentrated. However, if such authority is not centralized in one state, then the commercial domicile is the place where the majority of the corporation's daily operational decisions are made. There are several factors to be considered in determining the commercial domicile of a corporation. These factors include, but are not limited to:

(a) The relative amount of revenue from sales in the various states
(b) The relative value of fixed assets in the various states
(c) The principal place of work of a majority of the employees
(d) The place where the corporate records are kept
(e) The principal place of work of the corporate executives
(f) The place where policy and investment decisions are made
(g) The relative amount of decision-making power held by various executives and employees
(h) The place where payments are made on intangibles held by the corporation
(i) Whether income from intangibles held by the corporation is taxable elsewhere
(j) The office from which the Federal income tax return is filed
(k) Information contained in the corporation's annual and quarterly reports
(l) The place where the board of directors meets.

(Department of State Revenue; Reg 6-3-1-22(010); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)

45 IAC 3.1-1-33 Definition of compensation

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-23

Sec. 33. "Compensation" Defined. The term "compensation" is used synonymously with the Act. *(Department of State Revenue; Reg 6-3-1-23(010); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)*

45 IAC 3.1-1-34 Definition of sales

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-23; IC 6-3-1-24; IC 6-3-2-2

Sec. 34. "Sales" Defined. The term "sales" as used in the Act includes all gross receipts which are not subject to allocation under IC 6-3-2-2 (g)–(k), and which are not the compensation of an employee for personal services *[See IC 6-3-1-23]*. Thus any business income of a corporate taxpayer is considered to be from "sales" under this definition, regardless of its actual source. *(Department of State Revenue; Reg 6-3-1-24(010); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)*

45 IAC 3.1-1-35 Definition of state

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-25

Sec. 35. "State" Defined. The term "state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof. *(Department of State Revenue; Reg 6-3-1-25(010); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata,*

2 IR 1743)

45 IAC 3.1-1-36 Tax rates
Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-1

Sec. 36. Imposition of Tax. The rate of adjusted gross income tax for individuals is 2%. The rate of adjusted gross income tax for corporations is 3%. *(Department of State Revenue; Reg 6-3-2-1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1522; errata, 2 IR 1743)*

45 IAC 3.1-1-37 Allocation and apportionment of income of multistate corporations
Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-2-2

Sec. 37. Division of Income in General. Corporations doing business both within and without Indiana shall determine their income from Indiana sources through the use of the allocation and apportionment provisions contained in IC 6-3-2-2(b)-(n), which generally follow the Uniform Division of Income For Tax Purposes Act. The multistate corporation must first determine what part of its adjusted gross income constitutes business income [See Regulation 6-3-1-20(010) *[45 IAC 3.1-1-29]*] and what part is nonbusiness income. Business income is apportioned to this state based on the 3-factor (or other approved) formula. Nonbusiness income is allocated to specific jurisdictions pursuant to paragraphs (g)-(k) of IC 6-3-2-2. Business income apportioned to this state plus nonbusiness income allocated to Indiana plus the modifications required by IC 6-3-1-3.5(b) gives the total of the taxpayer's net income which is subject to adjusted gross income tax. As used above, the word "apportionment" refers to the division of income between states by use of the 3-factor (or other approved) formula; "allocation" means the assignment of income to a particular jurisdiction. *(Department of State Revenue; Reg 6-3-2-2(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1523; errata, 2 IR 1743)*

45 IAC 3.1-1-38 Definition of doing business
Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 38. Doing Business. For apportionment purposes, a taxpayer is "doing business" in a state if it operates a business enterprise or activity in such state including, but not limited to:

(1) Maintenance of an office or other place of business in the state

(2) Maintenance of an inventory of merchandise or material for sale distribution, or manufacture, or consigned goods

(3) Sale or distribution of merchandise to customers in the state directly from company-owned or operated vehicles where title to the goods passes at the time of sale or distribution

(4) Rendering services to customers in the state

(5) Ownership, rental or operation of a business or of property (real or personal) in the state

(6) Acceptance of orders in the state

(7) Any other act in such state which exceeds the mere solicitation of orders so as to give the state nexus under P.L.86-272 to tax its net income.

As stated in Regulation 6-3-2-2(b)(010) *[45 IAC 3.1-1-37]*, corporations doing business in Indiana as well as other states are subject to the allocation and apportionment provisions of IC 6-3-2-2(b)-(n). *(Department of State Revenue; Reg 6-3-2-2(b)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1523; errata, 2 IR 1743)*

45 IAC 3.1-1-39 Apportionment of business income by corporations
Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 39. Apportionment of Business Income. All corporations subject to the allocation and apportionment provisions of IC 6-3-2-2(b)-(n) shall apportion their business income by use of the 3-factor formula described below, unless the taxpayer obtains a ruling which permits, or the Department requires, the use of a different formula which more fairly reflects its income from Indiana sources. See IC 6-3-2-2(1). The 3-factor formula is as follows:

$$\text{business income} \times \frac{\text{property factor} + \text{payroll factor} + \text{sales factor}}{3}$$

(Department of State Revenue; Reg 6-3-2-2(b)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1523; errata, 2 IR 1743)

45 IAC 3.1-1-40 Property factor for apportionment

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 40. Property Factor. The property factor is a fraction, the numerator of which is the average value of the taxpayer's Indiana property, and the denominator of which is the total value of the taxpayer's property everywhere. As used in this regulation *[45 IAC 3.1-1-40]*, the word "property" includes all real and tangible personal property of the taxpayer, whether owned or rented, which is or could be used to produce business income during the tax period. This includes land, buildings, machinery, inventory, equipment and any other real or tangible personal property used to produce business income, but not coin, currency or intangibles. Property, the income from which is subject to allocation as nonbusiness income, is excluded from the factor. Property producing both business and nonbusiness income is included only to the extent it was used to produce business income. *(Department of State Revenue; Reg 6-3-2-2(c)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1523; errata, 2 IR 1743)*

45 IAC 3.1-1-41 Property included in property factor

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 41. Property Used For the Production of Business Income. The property factor includes all property owned or rented by the taxpayer which is actually used or is available for or capable of being used to produce business income. Property held as reserves or stand-by facilities, or for a reserve source of materials, is included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are included in the factor. Property under construction during the tax period (except inventoriable goods in process) are includable only if and only to the extent it is actually used to produce business income.

Property used or held for the production of business income must remain in the property factor until its permanent withdrawal is established by an identifiable event such as its sale or conversion to the production of nonbusiness income, such as a lease for an extended period of time.

Examples:

(1) The taxpayer closed one of its plants and held the property idle until it was sold five months later. The value of the property is included in the property factor until the date of sale.

(2) Same as in (1) *[subsection (1) of this section]*, except the property is leased until sale. The rental income is business income and the property remains in the property factor until sale.

(3) Same as in (1) *[subsection (1) of this section]*, except the property remains idle for more than 5 years pending sale. At the end of the first 5 years, it is removed from the property factor.

(4) The taxpayer ceases to operate one of the divisions of its business, but holds part of the property of such division solely for investment purposes. It does not thereafter use the property in the regular course of business. At the time the property is converted to investment property, it is removed from the property factor. Any income from the use of the property as an investment is nonbusiness income. *(Department of State Revenue; Reg 6-3-2-2(c)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1523; errata, 2 IR 1743)*

45 IAC 3.1-1-42 Consistency among reports

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 42. Consistency in Reporting. In filing returns with this state, the taxpayer's valuation and treatment of property as business or nonbusiness property must be consistent from year to year. It must also be consistent with the taxpayer's treatment of such property for purposes of returns filed with other states having apportionment statutes and regulations substantially similar to Indiana's. If the taxpayer's Indiana returns are not consistent in these respects, the returns should disclose the nature and extent of the inconsistency. *(Department of State Revenue; Reg 6-3-2-2(c)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1524; errata, 2 IR 1743)*

45 IAC 3.1-1-43 Numerator of property factor

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 43. Property Factor-Numerator. The numerator of the property factor includes the average value of the taxpayer's Indiana property which is used to produce business income. “Indiana property” is all real and tangible personal property owned or rented and used in the state during the tax period. Property in transit between states is considered to be at destination. However, mobile or movable property which may be used in more than one state in the regular course of the taxpayer's business, i.e., rolling stock, construction equipment, leased electronic equipment, etc., shall be included in the numerator based on total time or miles (as applicable) used in the state. See Regulation 6-3-2-2(l)(020) *[45 IAC 3.1-1-63]*. Automobiles assigned to traveling employees are included in the numerator if the employee's compensation is assigned to Indiana under the payroll factor or if the automobile is licensed in Indiana. *(Department of State Revenue; Reg 6-3-2-2(c)(040); filed Oct 15, 1979, 11:15 am: 2 IR 1524; errata, 2 IR 1743)*

45 IAC 3.1-1-44 Valuation of owned property

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 44. Valuation of Owned Property. Property owned by the taxpayer is valued at original cost. If the original cost cannot be ascertained, the property is valued at fair market value as of the date of acquisition by the taxpayer.

“Original cost” does not make allowance for depreciation.

Examples:

(1) The taxpayer, using the calendar year basis of reporting income, acquires a plant in Indiana for $500,000 at the first of the year. In July, it expends $100,000 in remodeling the facility. It claims depreciation for the year of $22,000. The value of the plant for purposes of the property factor is $600,000.

(2) X Corporation merges into Y Corporation during the tax year in a reorganization which is tax-free under the Internal Revenue Code. At the time of the merger, X owned a factory which it originally built ten years earlier at a cost of $1,000,000 and which had a basis of $900,000 due to depreciation. Since the factory is acquired by Y in a transaction in which under the Internal Revenue Code its basis is the same for Y as it was for X, Y will include the property in the property factor at X's original cost: $1,000,000.

(3) Corporation Y acquires the assets of Corporation X in a liquidation by which Y is entitled under Internal Revenue Code § 334(b)(2) to use the original cost of X stock as the basis for X's assets (i.e., stock possessing 80% control of X is purchased and liquidated within 2 years). Y's cost of X's assets is the purchase price of X stock prorated over the assets.

Inventory is included in the property factor in accordance with the valuation method used by the taxpayer for Federal income tax purposes. Property acquired by gift or inheritance is valued at its basis for determining depreciation for Federal income tax purposes.

The taxpayer's owned property is generally valued at its average value at the beginning and ending of the tax year. See Regulation 6-3-2-2 (c) (070) *[45 IAC 3.1-1-46]*. *(Department of State Revenue; Reg 6-3-2-2(c)(050); filed Oct 15,*

1979, 11:15 am: 2 IR 1524; errata, 2 IR 1743)

45 IAC 3.1-1-45 Valuation of rented property

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 45. Valuation of Rented Property. For purposes of computing the property factor, property rented by the taxpayer is valued at eight times its annual net rental rate. "Net rental rate" is the total annual rent paid by the taxpayer, less total annual rent from subrentals received by it which do not constitute business income. In exceptional cases, this may result in a negative number of valuation which is otherwise clearly inaccurate. In such instances, any method which properly reflects the value may be required by the Department or requested by the taxpayer. However, in no case may the net annual rental value be less than an amount which bears the same ratio to total annual rental rate as the property used by it bears to all of the rental property.

Example:

A taxpayer rents a ten-story building for $1,000,000 per year. It uses the first two floors itself and sublets the top eight stories for $1,000,000 per year. The taxpayer's net annual rental rate for the building cannot be less than $200,000.

Subrentals which constitute business income are not deductible in computing net rental rate.

"Annual rental rate" is the amount paid by the taxpayer as rent over a 12-month period. If the property is rented for less than 12 months, the net rent paid for the actual period rented is the annual rental rate. However, if the taxpayer rents property for 12 or more months and the current tax period is less than 12 months (due, for instance, to a reorganization or other such cause) the net rent paid for the short period is the annual rental rate. If the rental term is less than 12 months it is the actual rent paid. Rent from property rented on a month-to-month basis is the actual rent paid due to the uncertain duration of the lease.

"Annual rent" is the actual consideration for use of the property and includes payment of a fixed sum of money or percentage of sales profits or receipts, as well as interest, taxes, insurance, repairs and any other items required as payment under the lease which are meant as additional rent or in lieu of rent. It does not include amounts paid as service charges such as utilities, janitor services, etc.

Leasehold improvements are valued as owned property regardless of whether the taxpayer is entitled to remove them upon termination of the lease or not. Hence, the original cost of the improvements is included in the property factor. *(Department of State Revenue; Reg 6-3-2-2(c)(060); filed Oct 15, 1979, 11:15 am: 2 IR 1524; errata, 2 IR 1743)*

45 IAC 3.1-1-46 Methods of averaging property values

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 46. Averaging Property Values. As a general rule, the average value of property owned by the taxpayer is determined, for purposes of the property factor, by averaging the values at the beginning and end of the tax period. However, the Department may require or allow averaging by monthly values if such method is required to properly reflect the average value of the property for the tax period. This method is permitted if substantial fluctuations in the values of property exist or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

In valuing rental property, averaging is achieved automatically through use of the method of determining the net annual rental rate set forth in Regulation 6-3-2-2(c)(060) *[45 IAC 3.1-1-45]*. *(Department of State Revenue; Reg 6-3-2-2(c)(070); filed Oct 15, 1979, 11:15 am: 2 IR 1525; errata, 2 IR 1743)*

45 IAC 3.1-1-47 Payroll factor for apportionment

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 47. Payroll Factor. The payroll factor shall include the total amount paid by the taxpayer for compensation

during the tax period.

The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by the use of the cash method if the taxpayer is required to report such compensation paid under such method for unemployment compensation purposes. The taxpayer shall be consistent in the treatment of compensation paid in the manner described in Regulation 6-3-2-2(c)(030) *[45 IAC 3.1-1-42]*.

The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded.

Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the Internal Revenue Code. In the case of employees not subject to the Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such were subject to the Internal Revenue Code.

The payroll factor includes only compensation which is attributable to the business income subject to apportionment. The compensation of any employee whose activities are connected primarily with nonbusiness income shall be excluded from the factor.

Examples:

(1) The taxpayer uses some of its employees in the construction of a storage building which, upon completion, is used for the production of business income. The wages paid to those employees is treated as a capital expenditure by the taxpayer. The amount of such wages is included in the payroll factor.

(2) The taxpayer owns various securities from which nonbusiness income is derived. The management of the taxpayer's investment portfolio is the only duty of Mr. X, an employee. The salary paid to Mr. X is excluded from the payroll factor. *(Department of State Revenue; Reg 6-3-2-2(d)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1525; errata, 2 IR 1743)*

45 IAC 3.1-1-48 Denominator of payroll factor

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 48. Denominator of Payroll Factor. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is exempt from taxation, for example, by Public Law 86-272, are included in the denominator of the payroll factor.

Example:

A taxpayer has employees in its state of legal domicile (State A) and is taxable in State B. In addition, the taxpayer has employees whose services are performed entirely in State C where the taxpayer is exempt from taxation by Public Law 86-272. As to these latter employees, the compensation will be assigned to State C where their services are performed (i.e., included in the denominator only of the payroll factor) even though the taxpayer is not taxable in State C. *(Department of State Revenue; Reg 6-3-2-2(d)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1525; errata, 2 IR 1743)*

45 IAC 3.1-1-49 Numerator of payroll factor

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 49. Numerator of Payroll Factor. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in this Regulation *[45 IAC 3.1-1-62]* to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation

Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitutes compensation paid in this state except for compensation excluded under Regulation 6-3-2-2(d)(010) *[45 IAC 3.1-1-47]*. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

Compensation is paid in this state if any one of the following tests, applied consecutively, are met:

(a) The employee's service is performed entirely within the state.

(b) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to Indiana:

(1) If the employee's base of operations is in Indiana, or

(2) If there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in Indiana; or

(3) If the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in Indiana. The term "base of operation" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons, or to replenish stock or other materials, repair equipment, or perform any functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

Employees engaged in the transportation of persons and/or materials as part of the taxpayer's regular business activities, i.e., truck or bus drivers, shall have their wages assigned to this state based on miles traveled in this state. See Regulation 6-3-2-2(l)(020) *[45 IAC 3.1-1-63]*. *(Department of State Revenue; Reg 6-3-2-2(d)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1526; errata, 2 IR 1743)*

45 IAC 3.1-1-50 Sales factor for apportionment; sales defined

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 50. Sales Factor–Sales Made in General Business Operations. "Sales" means all gross receipts of the taxpayer which are not subject to allocation as nonbusiness income. The following are examples of "sales" in various situations:

(1) If the taxpayer's business activity consists of manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property which would be included as inventory of the taxpayer if on hand at the close of the tax year) held by the taxpayer primarily for sale in the ordinary course of business. Gross receipts for this purpose means gross sales price, less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts and shall be in the sales factor only if such taxes are included in the gross receipts or gross sales as reported on the taxpayer's Federal returns.

(2) If the taxpayer's business activity consists of providing services, such as the operation of an advertising agency, or the performance of equipment service contracts or research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions and similar items.

(3) If the taxpayer is working under a cost plus fixed fee contract, such as the operation of a government owned plant for a fee, gross receipts includes the entire reimbursed cost plus the fee.

(4) If the taxpayer is in the business of renting real or tangible personal property, "sales" includes the gross

receipts from the rental, lease, or licensing the use of the property.

(5) If the taxpayer is in the business of selling, assigning, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

In some cases, certain gross receipts should be disregarded in determining the sales factor to effectuate an equitable apportionment. See Regulation 6-3-2-2(l)(010) *[45 IAC 3.1-1-62]*. The sales factor should be consistent in the manner described in Regulation 6-3-2-2(c)(030) *[45 IAC 3.1-1-42]*. *(Department of State Revenue; Reg 6-3-2-2(e)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1526; errata, 2 IR 1743)*

45 IAC 3.1-1-51 Denominator of sales factor

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2; IC 6-3-4-14

Sec. 51. Denominator of Sales Factor. The denominator of the sales factor includes all gross receipts from the taxpayer's sales, except as noted in Regulation 6-3-2-2(l)(010) *[45 IAC 3.1-1-62]*. The denominator shall not include sales made between members of an affiliated group filing consolidated returns under IC 6-3-4-14. *(Department of State Revenue; Reg 6-3-2-2(e)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1527; errata, 2 IR 1743)*

45 IAC 3.1-1-52 Numerator of sales factor

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2; IC 6-3-4-14

Sec. 52. Numerator of Sales Factor. The numerator of the sales factor generally includes gross receipts from sales attributable to this state, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness. The numerator shall not include sales between members of an affiliated group filing consolidated returns under IC 6-3-4-14. *(Department of State Revenue; Reg 6-3-2-2(e)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1527; errata, 2 IR 1743)*

45 IAC 3.1-1-53 In-state sales of tangible personal property

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 53. When Sales of Tangible Personal Property Are in This State. Gross receipts from the sales of tangible personal property (except sales to the United States Government–See Regulation 6-3-2-2(e)(050) *[45 IAC 3.1-1-54]* are in this state: (a) if the property is delivered or shipped to a purchaser within this state regardless of the F.O.B. point or other conditions of sales; or (b) if the property is shipped from an office, store, factory, or other place of storage in this state, and the taxpayer is not taxable in the state of the purchaser. See Regulation 6-3-2-2(n)(010) *[45 IAC 3.1-1-64]*.

Examples:

(1) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state. Example: The taxpayer, with inventory in State A sold $100,000 of its products to a purchaser having branch stores in several states including this state. The order for the purchase was placed by the purchaser's central purchasing department located in State B. $25,000 of the purchase order was shipped directly to the purchaser's branch store in this state. The branch store in this state is the "purchaser within this state" with respect to $25,000 of the taxpayer's sales.

(2) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state. Example: The taxpayer makes a sale to a purchaser who maintains a central warehouse in this state at which all merchandise purchases are received. The purchaser reships the goods to its branch offices in other states for sale. All of taxpayer's products shipped to the purchaser's warehouse in this state is property "delivered or shipped to a purchaser within this state."

(3) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state. Example: A taxpayer in Indiana sold merchandise to a purchaser in State A. The taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in Indiana pursuant to the purchaser's instructions. The sale by the taxpayer is "in this state."

(4) When the property being shipped by a seller from the state of origin to a consignee in another state is diverted while enroute to a purchaser in this state, the sales are in this state. Example: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While enroute the produce is diverted to the purchaser's place of business in Indiana in which state the taxpayer is subject to tax. The sale by the taxpayer is attributed to Indiana.

(5) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. Such sale is termed a "Throwback" sale. Example: The taxpayer has its head office and factory in State A. It maintains a branch office and inventory in Indiana. Taxpayer's only activity in State B is the solicitation of orders by a resident salesman. All orders by the State B salesman are sent to the branch office in Indiana for approval and are filled by shipment from the inventory in Indiana. Since the taxpayer is immune under P.L.86-272 from tax in State B, all sales of merchandise to purchasers in State B are attributed to Indiana, the state from which the merchandise was shipped.

(6) If a taxpayer whose salesman operated from an office located in Indiana makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the sale will be attributed to the state from which the property is shipped if the taxpayer is taxable in that state. If the taxpayer is not taxable in the state from which the property is shipped, then the property will be deemed to have been shipped from Indiana and the sale is attributed to Indiana. Example: The taxpayer in Indiana sold merchandise to a purchaser in State A. Taxpayer is not taxable in State A. Upon direction of the taxpayer, the merchandise was shipped directly to the purchaser by the manufacturer in State B. If the taxpayer is taxable in State B, the merchandise is deemed to have been shipped from State B to the purchaser in State A. If the taxpayer is not taxable in State B, the merchandise is deemed to have been shipped from Indiana by the taxpayer to the purchaser in State A.

(7) Sales are not "in this state" if the purchaser picks up the goods at an out-of-state location and brings them back into Indiana in his own conveyance. *(Department of State Revenue; Reg 6-3-2-2(e)(040); filed Oct 15, 1979, 11:15 am: 2 IR 1527; errata, 2 IR 1743)*

45 IAC 3.1-1-54 Definition of sales to United States government

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 54. Sales to United States Government. Gross receipts from the sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory or other place of storage in this state. For the purposes of this regulation *[45 IAC 3.1-1-54]*, only sales for which the United States Government makes direct payment to the seller pursuant to the terms of the contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government. However, sales made to a prime contractor will be considered sales to the United States Government where the prime contractor is authorized to act as agent for the United States Government, and for this reason only qualifies to purchase under Federal Supply Contracts entered into between the taxpayer and the United States Government.

Examples:

(1) A taxpayer contracts with the General Services Administration to deliver X number of trucks which were paid for by the United States Government. The United States Government is the purchaser.

(2) The taxpayer as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a component of a rocket for $1,000,000. The sale of the subcontractor to the prime contractor is not a sale to the United States Government. When the United States Government is the purchaser of property which remains in the possession of the taxpayer in this state for further processing under another contract, or for other reasons,

"shipment" is deemed to be made at the time of acceptance by the United States Government. *(Department of State Revenue; Reg 6-3-2-2(e)(050); filed Oct 15, 1979, 11:15 am: 2 IR 1528; errata, 2 IR 1743)*

45 IAC 3.1-1-55 Attribution of sales to state

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 55. When Sales Other Than Sales of Tangible Personal Property Are in This State. Gross receipts from transactions other than sales of tangible personal property shall be included in the numerator of the sales factor if the income-producing activity which gave rise to the receipts is performed wholly within this state. Except as provided below if the income producing activity is performed within and without this state such receipts are attributed to this state if the greater proportion of the income producing activity is performed here, based on costs of performance.

The term "income producing activity" means the act or acts directly engaged in by the taxpayer for the ultimate purpose of obtaining gains or profit. Such activity does not include activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, "income producing activity" includes but is not limited to the following: (1) The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service. (2) The sale, rental, leasing, or licensing the use of or other use of tangible personal property. (3) The sale, licensing the use of or other use of intangible personal property.

Income producing activity is deemed performed at the situs of real, tangible and intangible personal property or the place where personal services are rendered. The situs of real and tangible personal property is at its physical location. The situs of intangible personal property is the commercial domicile of the taxpayer (i.e., the principal place from which trade or business of the taxpayer is directed or managed), unless the property has acquired a "business situs" elsewhere. "Business situs" is the place at which intangible personal property is employed as capital; or the place where the property is located if possession and control of the property is localized in connection with a trade or business so that substantial use or value attaches to the property. Example: Taxpayer, a corporation whose principal business activity is the manufacture and sale of hot water heaters, obtains notes for the sale of such water heaters in connection with its Indiana business activity. The property has a business situs in this state, therefore, interest income derived from such notes is attributable to this state.

The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

If receipts from sales other than sales of tangible personal property do not constitute a principal source of business income and such receipts are included in the denominator of the receipts factor, such receipts are in this state if: (a) the income producing activity is performed wholly within this state; or (b) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

Examples:

(1) The taxpayer is engaged in the heavy construction business in which it uses cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term rentals of the equipment when not needed on any project. The taxpayer rented some of the equipment to X for three weeks. The equipment was used by X for two weeks in this state and one week in State Y. The taxpayer's direct costs in connection with the equipment during the rental period was $500 each week. Accordingly, the greater proportion of such costs was incurred in this state. All of the rental receipts are business income and for purposes of the sales factor are included in the numerator for this state.

(2) Taxpayer, whose commercial domicile is in this state, manufactures and sells industrial chemicals. Taxpayer owns patents on certain of its products. The taxpayer licensed the production of the chemicals in foreign countries in return for which the taxpayer receives royalties which constitute a relatively minor amount of its income. The royalties are business income and for purposes of the sales factor are included in the numerator for the state of the taxpayer's commercial domicile.

Except as provided by special apportionment formulas, receipts from sales other than sales of tangible personal property which constitute a principal source of business income shall be attributed to this state in accordance with the following:

(a) Gross receipts from the sale, lease, rental or other use of real property are in this state if the real property is located in this state.

(b) Gross receipts from the rental, lease, licensing the use of or other use of tangible personal property shall be assigned to this state if the property is within this state during the entire period of rental, lease, license or other use. If the property is within and without this state during such period, gross receipts attributable to this state shall be based upon the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.

(c) Income from transportation between a point in Indiana and a point outside Indiana shall be attributed to this state on a mileage basis. See Regulation 6-3-2-2(l)(020) *[45 IAC 3.1-1-63]*.

(d) Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If the services are performed partly within and without this state, such receipts shall be attributed to this state based upon the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract or other obligation, as for example, time expended in negotiating the contract, is excluded from the computations.

Examples:

(1) The taxpayer, a road show, gave theatrical performances at various locations in State X and in this state during the tax period. All gross receipts from performances given in this state are attributed to this state.

(2) The taxpayer, a public opinion survey corporation, conducted a poll by its employees in State C and in this state for the sum of $9,000. The project required 600 man hours to obtain the basic data and prepare the survey report. Two hundred of the 600 man hours were expended in this state. The receipts attributable to this state are:

$$\$3{,}000 \quad \frac{(200 \text{ man hours})}{600 \text{ man hours}} \quad \times \quad \$9{,}000)$$

(e) Gross receipts from intangible personal property shall, if classified as business income, be attributed to this state based upon the ratio which the total property and payroll factors in this state bears to the total of the property and payroll factors everywhere for the tax period as determined in Regulations 6-3-2-2(c)(010) *[45 IAC 3.1-1-40]* et seq. and 6-3-2-2(d)(010) *[45 IAC 3.1-1-47]* et seq.

(f) The provisions of this Regulation *[45 IAC 3.1-1-55]* shall also apply to sales other than sales of tangible personal property to the United States Government.

(Department of State Revenue; Reg 6-3-2-2(e)(060); filed Oct 15, 1979, 11:15 am: 2 IR 1528; errata, 2 IR 1743)

45 IAC 3.1-1-56 Allocation of nonbusiness income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 56. Allocation of Nonbusiness Income. Rents, royalties, capital gains, interest and dividends when considered nonbusiness income are allocated to specific jurisdictions as outlined in Regulations 6-3-2-2(h) through 6-3-2-2(k) *[45 IAC 3.1-1-57–45 IAC 3.1-1-61]*. Such income and the deductions connected therewith are not taken into consideration in computing the taxpayer's apportionment formula. When the taxpayer has deductions applicable to both business and nonbusiness income, such deductions must be prorated to determine what part is subject to allocation. *(Department of State Revenue; Reg 6-3-2-2(g)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1530; errata, 2 IR 1743)*

45 IAC 3.1-1-57 Rents and royalties from real property and tangible personal property as nonbusiness income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 57. Rents and Royalties from Real and Tangible Personal Property. Rental income from real and tangible

property is nonbusiness income if the property with respect to which the rental income was received is not or could not be used in the taxpayer's trade or business or is not incidental thereto.

Examples:

(1) The taxpayer operates a multistate car rental business. The income from car rentals is business income since such activity is the taxpayer's principal business.

(2) The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and earthmoving vehicles. The taxpayer makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental income is business income.

(3) The taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five-story office building for use in connection with its trade or business. It used the street floor as one of its retail stores and the second and third floors for its general corporate headquarters. The remaining two floors are incidental to the operation of the taxpayer's trade or business. The rental income is business income.

(4) The taxpayer, who operates a multistate chain of grocery stores, purchases as an investment an office building in another state with surplus funds and leases the entire building to others. The net rental income is nonbusiness income.

(5) The taxpayer constructed a plant in 1930 as a part of its multistate manufacturing business. On June 30, of the tax year, the plant was closed and put up for sale. The plant was rented from July 1 of that year, until sold in November of the following year. Rental income is business income.

Net rents and royalties from real property, to the extent they constitute nonbusiness income, are allocated to the state where the property is located. Nonbusiness income from tangible personal property is allocated to Indiana to the extent the property is utilized in the state, or to Indiana in its entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized. *(Department of State Revenue; Reg 6-3-2-2(h)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1530; errata, 2 IR 1743)*

45 IAC 3.1-1-58 Allocation of capital gains and losses

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 58. Capital Gains and Losses. Capital gains and losses from the sale of real property formerly used to produce nonbusiness income are allocated to the state where the property is located. Capital gains and losses from the sale of nonbusiness tangible personal property are allocated to Indiana if the property had a situs in the state when sold, or if the taxpayer's commercial domicile is in Indiana and it is not taxable in the state in which the property had a situs. Capital gains and losses from sales of nonbusiness intangible property are allocated to Indiana if the taxpayer's commercial domicile is in this state. *(Department of State Revenue; Reg 6-3-2-2(i)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1530; errata, 2 IR 1743)*

45 IAC 3.1-1-59 Interest as nonbusiness income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 59. Interest. Interest income is nonbusiness income if the intangible with respect to which the interest was received did not arise out of or was not created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible was not related to or incidental to such trade or business operations. The term “interest” as used in this regulation *[45 IAC 3.1-1-59]* includes service charges, time-price differentials, and all other charges for the use of money.

Examples:

(1) The taxpayer operates a multistate chain of department stores, selling for cash and on credit. Service charges, interest, or time-price differentials and the like are received with respect to installment sales and revolving charge accounts. These amounts are business income.

(2) The taxpayer conducts a multistate manufacturing business. During the year the taxpayer receives a Federal income tax refund and collects a judgment against a debtor of the business. Both the tax refund and the judgment bore

interest. The interest income is business income.

(3) The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover such items as Workmen's Compensation claims, rain and storm damage, machinery replacement, etc. The monies in those accounts are invested as interest. Similarly, the taxpayer temporarily invests funds intended for payment of Federal, State and local tax obligations. The interest income is business income.

(4) The taxpayer is engaged in a multistate money order and traveler's checks business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is business income.

(5) The taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital and extra cash totaling $200,000 which it regularly invests in short-term interest bearing securities. The interest income is business income.

(6) In January the taxpayer sold all stock of a subsidiary for $20,000,000. The funds are placed in a separate interest-bearing account pending a decision by management as to how the funds are to be utilized. The interest income is business income.

(7) The taxpayer, a multistate manufacturer, purchases and maintains a portfolio of interest-bearing securities for investment purposes. The interest from such securities is nonbusiness income.

Nonbusiness interest is allocated to Indiana if the taxpayer's commercial domicile is in this state. *(Department of State Revenue; Reg 6-3-2-2(j)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1530; errata, 2 IR 1743)*

45 IAC 3.1-1-60 Dividends as business income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 60. Dividends. Dividends are nonbusiness income if the stock with respect to which the dividends are received did not arise out of or was not acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is not related to or incidental to such trade or business operation.

Examples:

(1) The taxpayer operates a multistate chain of stock brokerage houses. During the year the taxpayer receives dividends on stock it owns. The dividends are business income.

(2) The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business the taxpayer maintains special accounts to cover such items as Workmen's Compensation claims, etc. A portion of the monies in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on national stock exchanges. Both the interest income and any dividends are business income.

(3) The taxpayer and several unrelated corporations own all of the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock in order to obtain a source of supply and materials used in its manufacturing business. The dividends are business income.

(4) The taxpayer is engaged in a multistate heavy construction business. Much of its construction work is performed for agencies of the Federal government and various state governments. Under state and Federal laws applicable to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets (cash and marketable securities) to current liabilities. In order to maintain an adequate bonding capacity the taxpayer holds various stocks and interest-bearing securities. Both the interest income and any dividends received are business income.

(5) The taxpayer receives dividends from the stock of its subsidiary or affiliate which acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income.

(6) The taxpayer is engaged in a multistate glass manufacturing business. It also holds a portfolio of stock for investment purposes, the acquisition and holding of which are unrelated to the manufacturing business. The dividends received are nonbusiness income.

Nonbusiness dividends are allocated to Indiana if the taxpayer's commercial domicile is in this state. *(Department*

of State Revenue; Reg 6-3-2-2(j)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1531; errata, 2 IR 1743)

45 IAC 3.1-1-61 Patent and copyright royalties as nonbusiness income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 61. Patent and Copyright Royalties. Patent and copyright royalties are nonbusiness income if the patent or copyright with respect to which the royalties were received did not arise out of or was not created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the patent or copyright is not related to or incidental to such trade or business operations.

Examples:

(1) The taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on certain of its products. The taxpayer licensed the production of chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are business income.

(2) The taxpayer is engaged in the music publishing business and holds copyrights on numerous songs. The taxpayer acquired the assets of a smaller publishing company, including music copyrights. Their acquired copyrights are therefore used by the taxpayer in its business. Any royalties received on these copyrights are business income.

(3) Same as last example, except that the acquired company also held the patent on a type of phonograph needle. The taxpayer does not manufacture or sell phonographs or phonograph equipment. Any royalties received on the patent would be nonbusiness income.

Nonbusiness patent and copyright royalties are allocated to Indiana to the extent used in the state, or, if the taxpayer's commercial domicile is in Indiana, to the extent used in states in which the taxpayer is not taxable. *(Department of State Revenue; Reg 6-3-2-2(k)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1531; errata, 2 IR 1743)*

45 IAC 3.1-1-62 Special cases of allocation and apportionment

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 62. Special Formulas for Division of Income. All corporations doing business in more than one state shall use the allocation and apportionment provisions described in Regulations 6-3-2-2(b)-(k) *[45 IAC 3.1-1-37–45 IAC 3.1-1-61]* unless such provisions do not result in a division of income which fairly represents the taxpayer's income from Indiana sources. In such case the taxpayer must request in writing or the Department may require the use of a more equitable formula for determining Indiana income. However, the Department will depart from use of the standard formula only if the use of such formula works a hardship or injustice upon the taxpayer, results in an arbitrary division of income, or in other respects does not fairly attribute income to this state or other states. It is anticipated that these situations will arise only in limited and unusual circumstances (which ordinarily will be unique and nonrecurring) when the standard apportionment provisions produce incongruous results. *(Department of State Revenue; Reg 6-3-2-2(l)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1532; errata, 2 IR 1743)*

45 IAC 3.1-1-63 Apportionment in absence of one or more factors

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2

Sec. 63. Property, Payroll and Sales Factors–Special Circumstances. In the case of a taxpayer that lacks one or more of the factors in the 3-factor formula, the taxpayer's business income will generally be apportioned by use of the remaining factor or factors.

Examples:

(1) The taxpayer, a wholly-owned subsidiary of a manufacturing corporation, has no employees of its own in Indiana or any other state. The taxpayer will apportion its business income by a formula the numerator of which is the

property and sales factors, and the denominator of which is two.

(2) The taxpayer, a sales subsidiary for a multistate manufacturer, has no property or payroll of its own in Indiana, but does in other states. The taxpayer's business income will be apportioned by a formula the numerator of which is the sales factor and the denominator of which is three.

Where in the computation of the property, payroll or sales factors, the taxpayer has not assigned part of its property, payroll, or sales to any state, the Department may require the exclusion of the unassigned property, payroll or sales from the denominator of the appropriate factor in order to prevent distortion of the apportionment.

Transportation Companies. IC 6-3-2-2(b) requires that interstate carriers and all other multistate taxpayers use the three-factor formula in apportioning their business income. This method will assure consistency in the application of the Adjusted Gross Income Tax Act to multistate carriers. Business income for transportation companies is apportioned to Indiana by the use of the following formula:

$$\frac{\text{tangible property} + \text{payroll} + \text{revenue transportation}}{3}$$

Definition of Factors

(A) Tangible Property. Fixed properties such as buildings and land used in business, shop and terminal equipment and trucks or cars used locally or any other tangible property connected with the transportation business, will be assigned to the state in which such properties are located.

The value of all movable equipment used in interstate transportation will be assigned to this State on the basis of total miles traveled in this State, as compared to total miles traveled everywhere. Fixed and movable property will then be combined to arrive at the total property factor, Indiana property over property everywhere.

Property owned by the transportation company is valued at original cost. Property rented is valued at eight (8) times the annual rental rate less any annual subrental.

(B) Payroll. Wages and salaries of employees assigned to fixed locations within this State shall be included in the payroll factor of this State. Wages of personnel operating interstate transportation equipment will be assigned to this State on the basis of total miles traveled in Indiana, as compared to total miles traveled everywhere. The payroll of permanent and transient personnel will then be combined to arrive at the total payroll factor, Indiana payroll over payroll everywhere.

(C) Revenue from Transportation. The total revenue dollars from transportation (both intra-state and inter-state) are to be assigned to the states traversed on the basis of class or category mileage in each state in which or through which the freight or passengers move. Pipelines may substitute revenue miles with barrel miles, cubic foot miles, or other appropriate measures of product movement. In order to determine the percentage of revenue from transportation services in Indiana, the fraction of revenue miles in Indiana over revenue miles everywhere must be applied to total revenue from transportation.

Example:

Computation of Three-Factor Apportionment Formula

A. Tangible Property Factor

Fixed property in Indiana	40,000
Fixed property everywhere	1,000,000
Milage *[sic.]* Factor 2%	(see C below)
Movable property everywhere	24,000,000

1. Indiana value of movable property

$2\% \times 24{,}000{,}000 = 480{,}000$

2. Fixed and movable property is combined to arrive at the total property factor

$$\frac{40{,}000 + 480{,}000}{1{,}000{,}000 + 24{,}000{,}000} = 2.08\% \text{ property factor}$$

B. Payroll Factor

Payroll at fixed Indiana location	20,000

Payroll at fixed location everywhere	1,000,000
Mileage Factor 2%	(see C below)
Payroll of employees operating interstate transportation everywhere	2,000,000

1. Indiana value of transient payroll
   2% × 2,000,000 = 40,000
2. Fixed and transient payroll is combined to arrive at the total payroll factor

$$\frac{20{,}000 + 40{,}000}{1{,}000{,}000 + 2{,}000{,}000} = 2\,\text{property factor}$$

C. Revenue From Transportation Factor

Road miles over Indiana	90,000
Road miles everywhere	4,500,000
Total gross receipts from transportation . .	6,000,000

1. Mileage Factor
   90,000 ÷ 4,500,000 = 2%

Mileage factor is combined with total gross receipts to arrive at the revenue from transportation factor
   2% × 6,000,000 = 120,000
   120,000 ÷ 6,000,000 = 2% revenue from transportation factor

D. Total Apportionment

Percentage Property	2.08
Payroll	2.00
Revenue	2.00

6.08 ÷ 3 = 2.03% apportionment percentage

(Department of State Revenue; Reg 6-3-2-2(l)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1532; errata, 2 IR 1743)

45 IAC 3.1-1-64 Definition of taxable in another state

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-25; IC 6-3-2-2

Sec. 64. "Taxable in Another State" Defined. A corporation is "taxable in another state" under the Act when such state has jurisdiction to subject it to a net income tax. This test applies if the taxpayer's business activities are sufficient to give the state jurisdiction to impose a net income tax under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provision of Public Law 86-272, 15 U.S.C.A. §381-385. In the case of any "State," as defined in IC 6-3-1-25, other than a state of the United States or political subdivision of such state, the determination of whether such "state" has jurisdiction to subject the taxpayer to a net income tax shall be made by application of the jurisdictional standards applicable to that state of the United States. If jurisdiction to tax is otherwise present, such "state" is not considered as being without jurisdiction to tax by reason of the provisions of a treaty between that state and the United States.

Example:

Corporation X is actively engaged in manufacturing farm equipment in State A and foreign country B. Both State A and foreign country B impose a net income tax but foreign country B exempts corporations engaged in manufacturing farm equipment. Corporation X is subject to the jurisdiction of State A and foreign country B.

Taxpayers are not subject to throwback on sales into states in which they are taxable under this regulation *[45 IAC 3.1-1-64]*. See Regulation 6-3-2-2(e)(040) *[45 IAC 3.1-1-53]*. *(Department of State Revenue; Reg 6-3-2-2(n)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1533; errata, 2 IR 1743)*

45 IAC 3.1-1-65 Exempt organizations and income; report

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2.8

Sec. 65. Exempt Organizations. Organizations exempt from Federal income tax under IRC §501 (a) are exempt from adjusted gross income tax. However, this exemption extends only to income of such organizations which is not taxable for Federal tax purposes. Thus organizations subject to tax under IRC §511 on their unrelated business income are also subject to adjusted gross income tax on such income.

Exempt organizations are required to file an annual report by the fifteenth day of the fifth month following the close of the tax year. Those organizations having unrelated business income must report such income by filing an annual income tax return no later than the time the annual report is due. The organization must make quarterly payments of adjusted gross income tax and file quarterly income tax returns if its adjusted gross income tax liability exceeds its gross income tax liability by $1000. See Regulation 6-3-4-4 (020) *[45 IAC 3.1-1-92]*.

For the supplemental net income tax liability of exempt organizations having unrelated business income, see Regulation 6-3-2-3.1 (010) *[45 IAC 3.1-1-68]*. *(Department of State Revenue; Reg 6-3-2-3(a)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1533; errata, 2 IR 1743)*

45 IAC 3.1-1-66 Subchapter S corporations and shareholders

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2.8; IC 6-3-4-13

Sec. 66. Subchapter S Corporations. Corporations electing Subchapter S status under Internal Revenue Code §1372 and which comply with the withholding requirements of IC 6-3-4-13 are exempt from adjusted gross and supplemental net income tax on all income except capital gains subject to tax under Internal Revenue Code §1378. This exemption is effective until the corporation's shareholders terminate the election with the Internal Revenue Service or until the corporation engages in transactions which disqualify it from Subchapter S status. A complete or partial corporate liquidation or the intent to dissolve will not in itself terminate the election.

Subchapter S corporation shareholders are taxed on their distributive shares of income at the individual income tax rate. The character of the income (as capital gains or ordinary income) also passes through to the shareholders.

Although Subchapter S corporations are generally not subject to adjusted gross income tax, they are subject to use tax and intangibles tax, and must report and pay such tax at the time the annual return is filed. Subchapter S corporations must also withhold adjusted gross income tax on any nonresident shareholder's share of corporate income. See Regulation 6-3-4-13(010) *[45 IAC 3.1-1-109]* et seq.

For filing requirements of Subchapter S corporations, see Regulation 6-3-2-3(b)(020) *[45 IAC 3.1-1-67]*. *(Department of State Revenue; Reg 6-3-2-3(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1534; errata, 2 IR 1743)*

45 IAC 3.1-1-67 Subchapter S corporation reports; taxation of shareholders

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2.8

Sec. 67. Subchapter S Corporations Filing Requirements. Qualified Subchapter S corporations will file an annual return, Form It-20S on or before the fifteenth day of the fourth month following the close of the corporation's tax year. The first annual return of the corporation must be accompanied by copies of Federal Form 2553, Election by Small Business Corporation, and by Federal Form 1120S covering the corporation's first-year business activities. Corporations must designate their Federal business activity code numbers in the appropriate place on the return, as well as designating their Federal identification numbers. Annual returns must be filed by any Subchapter S corporation incorporated in Indiana or having income from Indiana sources.

Indiana resident shareholders of a Subchapter S corporation that conducts business in more than one state are subject to the adjusted gross income tax on their entire share of the corporation's income. They may, however, be allowed a credit for any taxes paid to another state on this income. Such credit will be pursuant to the provisions of

Regulation 6-3-3-3(a)(010) *[45 IAC 3.1-1-74]*.

Nonresident shareholders of a Subchapter S corporation conducting business both within and without Indiana must divide their income by using the corporate division of income provisions contained in Regulation 6-3-2-2(b)(010) *[45 IAC 3.1-1-37]* et seq. In particular, these shareholders must apportion their business income on the three-factor formula outlined in Regulation 6-3-2-2(b)(030) *[45 IAC 3.1-1-39]*.

Any Subchapter S corporation which is a member of a partnership, joint venture, or pool will cause such partnership, joint venture, or pool to become subject to gross and adjusted gross income tax. See Regulation 6-3-7-1(b)(010) *[45 IAC 3.1-1-151]*. In that case, the partnership, joint venture, or pool will file annual return IT-65T and pay the tax shown to be due thereon. Profits from such entities are deductible by the corporation on its annual return.

Subchapter S corporations are required to make information returns as described in Regulation 6-3-4-9(010) *[45 IAC 3.1-1-104]*. *(Department of State Revenue; Reg 6-3-2-3(b)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1534; errata, 2 IR 1743)*

45 IAC 3.1-1-68 Unrelated business income of exempt organizations

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-3.1

Sec. 68. Unrelated Business Income of Exempt Organizations. Under IC 6-3-2-3.1, exempt organizations are subject to adjusted gross income tax and supplemental net income tax on income derived from an unrelated trade or business as defined in Internal Revenue Code §513. This section does not apply to the United States and its agencies and instrumentalities, nor to the State of Indiana, a state agency as defined in IC 34-4-16.5-2 *[IC 34-4 was repealed by P.L.1-1998, SECTION 221, effective July 1, 1998.]*, nor a political subdivision of the state as defined in IC 34-4-16.5-2 *[IC 34-4 was repealed by P.L.1-1998, SECTION 221, effective July 1, 1998.]*, all of which are exempt from adjusted gross income tax on all income. This section does apply to all other exempt organizations such as churches, fraternal organizations and professional societies.

An "unrelated trade or business" is one the conduct of which is not substantially related (aside from the needs of income or the use of the profits) to the performance by the exempt organization of the function constituting the basis for which it was granted exemption. However, under Internal Revenue Code § 513 the term does not include income from a trade or business:

(1) in which substantially all the work is done for the organization without compensation; or

(2) which is carried on primarily for the convenience of its members, employees, etc.; or

(3) which is the selling of merchandise substantially all of which has been received by the organization as gifts or contributions.

The exempt organization will compute its taxable unrelated business income in the same manner as any other taxpayer having business income. However, its business deductions are limited to those directly connected with the carrying on of the unrelated trade or business. Taxpayers should consult the Internal Revenue Code §§511-515 and the regulations established thereunder for a more detailed explanation of the Federal income tax on unrelated business income. *(Department of State Revenue; Reg 6-3-2-3.1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1534; errata, 2 IR 1743)*

45 IAC 3.1-1-69 Federal civil service annuity income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-3.7

Sec. 69. Federal Civil Service Annuity Income. See Regulation 6-3-1-3.5(a)(050)(12) *[Subsection (12) of 45 IAC 3.1-1-5]*. *(Department of State Revenue; Reg 6-3-2-3.7(010); filed Oct 15, 1979, 11:15 am: 2 IR 1535; errata, 2 IR 1743)*

45 IAC 3.1-1-70 Military pay

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-4

Sec. 70. Military Pay. See Regulation 6-3-1-3.5(a)(050)(10) *[Subsection (10) of 45 IAC 3.1-1-5]*. *(Department of State Revenue; Reg 6-3-2-4(010); filed Oct 15, 1979, 11:15 am: 2 IR 1535; errata, 2 IR 1743)*

45 IAC 3.1-1-71 Credits and adjustments for taxes withheld

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-3-1

Sec. 71. Individual Withholding Credits. To claim credit for taxes withheld under this Act, an individual taxpayer must attach a copy of the wage and tax statement, Form W-2, to the Indiana Individual Income Tax return. No credit may be claimed for tax withheld to any other state or political subdivision of any other state with the exception of local taxes paid against County Adjusted Gross Income Tax. Amounts withheld for local income taxes under provisions of IC 6-3-1-3.5(a)(5) may be deducted as an adjustment (but not as a credit) to the extent allowed. *(Department of State Revenue; Reg 6-3-3-1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1535; errata, 2 IR 1743)*

45 IAC 3.1-1-72 Credit for other taxes paid by corporation

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-2; IC 6-3-8

Sec. 72. Corporation Credit Payments. Corporate taxpayers, including partnerships with corporate partners, are subject to both the gross and adjusted gross income taxes. See Regulation 6-3-7-1(b). However, IC 6-3-3-2 provides for a credit against the corporation's Adjusted Gross Income Tax liability for any Gross Income Tax imposed. Thus, the taxpayer will be subject to the greater of the two taxes plus the supplemental net income tax imposed under IC 6-3-8-1 through 6-3-8-6 and will apply payments made under either tax against the ultimate amount due. *(Department of State Revenue; Reg 6-3-3-2(010); filed Oct 15, 1979, 11:15 am: 2 IR 1535; errata, 2 IR 1743)*

45 IAC 3.1-1-73 Completed contract accounting; credit for taxes paid

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-5-12; IC 6-2.1-8-2; IC 6-3-3-2

Sec. 73. Completed Contract Accounting-Carryover of Gross Income Tax Credits. A corporation using the completed contract method of accounting for Federal income tax and Indiana Adjusted Gross Income Tax purposes is required under IC 6-2-1-23(b) *[Repealed by P.L.77-1981, SECTION 22. Recodified as IC 6-2.1-5-12.]* to report its gross receipts from the contract on the cash basis. For the year the contract is reported for Adjusted Gross Income Tax purposes, gross income taxes paid on the contract in the preceding three years may be claimed as a credit reduced by the amounts used to offset Adjusted Gross Income Tax in the preceding years. Also, this credit is limited to the amount of Adjusted Gross Income Tax incurred on the contract. *(Department of State Revenue; Reg 6-3-3-2(020); filed Oct 15, 1979, 11:15 am: 2 IR 1535; errata, 2 IR 1743)*

45 IAC 3.1-1-74 Credit for other state income taxes

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-3

Sec. 74. Credit for Taxes Paid To Other States. An Indiana resident must report income from all sources, including out-of-state income, in calculating Indiana adjusted gross income tax. If a resident is required and does pay an income tax to any other state (depending upon which state), possession or foreign country on income derived therefrom, he may, upon production of satisfactory evidence of such payment of tax, claim a credit against his Indiana Adjusted Gross Income Tax.

The credit is the lesser of:

(a) The amount of income tax actually paid to the other state on income from that state; or,

(b) An amount equal to two percent (2%) of the income from the other state which is taxed by Indiana; or

(c) The amount of state tax due to Indiana.

Credit is not allowed for city income or occupational taxes paid in other states or state income taxes paid in states allowing Indiana residents a nonresident credit.

Satisfactory evidence is as follows:

The credit taken must be supported by a separate calculation of the credit along with a copy of the tax return filed with the other state, certified as true, and/or having been received by the proper taxing authority of such state. Withholding statements or other evidence of tax payments without a certified copy of an annual tax return will not be acceptable.

Income from another state is that part of Federal gross income, minus all attributable Internal Revenue Code section 62 deductions, derived from sources without Indiana that is taxable in a particular state or country and is also taxable under this Act.

EXAMPLE:

Assuming the following facts:

Income from Indiana	$ 6,000.00
Income from other state	4,000.00
Total Indiana exemptions	3,000.00
Tax liability to other state	100.00
Calculate Indiana tax and credits as follows:	
Total income	$10,000.00
Less: Exemptions	3,000.00
Taxable Income	7,000.00
Indiana tax rate	.02
Indiana tax	140.00
Credit for tax paid to other state:	
Income from other state	$ 4,000.00
Indiana rate	.02
*Tax Credit	$ 80.00
Balance of tax due Indiana	$ 60.00

*[This amount cannot be larger than tax actually paid to other state.] *(Department of State Revenue; Reg 6-3-3-3(a)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1535; errata, 2 IR 1743)*

45 IAC 3.1-1-75 Nonresident credit from other states

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-3

Sec. 75. Credit Agreement States. Credit for taxes paid other states will not be allowed for taxes paid to states which allow Indiana residents a nonresident credit.

Credit should instead be obtained from the state imposing the tax upon Indiana residents. These states include:

Arizona	Maryland	West Virginia
California	New Mexico	Washington D.C.

All income received from these states is reported in the same manner as if it were received from Indiana. No credit may be taken on the Indiana tax return for any taxes withheld or otherwise paid to the other state. Instead, after filing the Indiana tax return, the taxpayer should file a nonresident tax return with the other state, taking credit for the Indiana tax. This nonresident return must be filed in accordance with the instructions received from the other state.

EXAMPLE: Taxpayer is Full-Year Indiana Resident

Income from Indiana	$6,000.00

Income from Arizona	4,000.00
Total Income Exemptions	3,000.00
Total liability to Arizona	120.00

Calculate Indiana tax and credits as follows:

Total income	$10,000.00
Less: Exemptions	3,000.00
Taxable Income	7,000.00
Indiana tax rate	.02
Indiana tax	140.00
Credit for tax paid to Arizona	NONE

Take credit on nonresident return filed with Arizona for tax paid to Indiana based on Arizona income. *(Department of State Revenue; Reg 6-3-3-3(a)(020); filed Oct 15, 1979, 11:15 am: 2 IR 1536; errata, 2 IR 1743)*

45 IAC 3.1-1-76 Reciprocity

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-3; IC 6-3-5-1

Sec. 76. Reciprocal Agreements States. Residents who have income consisting of salaries, wages, and commissions from states with which Indiana has a reciprocal tax agreement must report all such income as if it were from Indiana. These states include:

Illinois	Michigan	Pennsylvania
Kentucky	Ohio	Wisconsin

Credit cannot be taken for any taxes withheld by or paid to any of these states in connection with salaries, wages, or commissions received from such states. If tax has been withheld by any of these states, a claim for refund should be filed with the state which withheld the taxes.

EXAMPLE: Taxpayer is Full-Year Indiana Resident

Income from Indiana	$6,000.00
Income from Illinois (wages)	4,000.00
Total Income Exemptions	3,000.00
Total liability to Illinois	-0-

Calculate Indiana tax and credits as follows:

Total income	$10,000.00
Less: Exemptions	3,000.00
Taxable Income	7,000.00
Indiana tax rate	.02
Indiana tax	140.00
Credit for tax paid to Illinois:	NONE

No credit is allowed taxpayer since Indiana and Illinois have a reciprocal agreement. Taxpayer must file with Illinois to recover any withholding to Illinois.

For income other than salaries, wages and commissions, a credit will be allowed under the procedures for claiming credit for taxes paid to other states as outlined in Regulation 6-3-3-3(a)(010) *[45 IAC 3.1-1-74]*.

Likewise, a resident of another reciprocal agreement state who works in Indiana and has Indiana withholding tax deducted from his wages, salaries or commissions may claim a refund of the amount so withheld. To claim a refund, an individual must file an Indiana Nonresident tax return indicating residency in a reciprocal state and attaching a wage and tax statement (Form W-2) showing that Indiana taxes were withheld. *(Department of State Revenue; Reg 6-3-3-*

3(a)(030); filed Oct 15, 1979, 11:15 am: 2 IR 1536; errata, 2 IR 1743)

45 IAC 3.1-1-77 Nonresident reverse credit reciprocity

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-3; IC 6-3-5-1

Sec. 77. Reverse Credit for Nonresidents. A credit is allowed against adjusted gross income tax imposed upon nonresidents who reside in states which grant similar credits to Indiana residents who become subject to tax under the laws of those states.

The Indiana credit (reverse credit) is the amount of income tax actually paid to the taxpayer's resident state but only on income derived from Indiana sources, or two percent (2%) of such income, whichever is less. The list of those states which grant a similar credit and the method for computing the allowable amount of credit are outlined under Regulation 6-3-3-3(a)(020) *[45 IAC 3.1-1-75]*.

In order to claim this credit, the taxpayer must file an Indiana Part-Year or Nonresident Tax Return along with a certified copy of the return filed with his resident state, reporting income which is subject to tax under this Act and under the laws of taxation of the other state. *(Department of State Revenue; Reg 6-3-3-3(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1536; errata, 2 IR 1743)*

45 IAC 3.1-1-78 Credit for the elderly

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-9

Sec. 78. Credit for the Elderly. A resident individual, and his spouse in the case of a joint return, is allowed a credit for the elderly on his Indiana return provided he qualifies for the credit under Section 37 of the Internal Revenue Code. The allowable credit is equal to the lesser of:

(A) Two-fifteenths (2/15) of tentative credit for the elderly on Federal schedules R and RP; or,

(B) *The remainder of:

(1) total taxes imposed for the taxable year less

(2) any allowable college credit or credit for taxes paid to other states.

*[The sum of college credit, credit for taxes paid to other states, and credit for the elderly may be equal to but cannot exceed the amount of state income tax due to Indiana.]

EXAMPLE:

Indiana Adjusted Gross Income	$10,000.00
Tax Liability before Credits	200.00
College credit	25.00
Credit for taxes paid to other states	125.00
Subtotal	$ 50.00
Tentative Federal Credit	$ 420.00
2/15 of Federal Credit	$ 56.00
Indiana Credit for the Elderly	$ 50.00

(lesser of $50.00 and $56.00)

(Department of State Revenue; Reg 6-3-3-4.1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1537; errata, 2 IR 1743) NOTE: IC 6-3-3-4.1 concerning the credit for the elderly was repealed by P.L.25-1981, SECTION 9. See, IC 6-3-3-9 concerning the unified tax credit for the elderly.

45 IAC 3.1-1-79 Credit for contributions to colleges

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-5

Sec. 79. College Credit. The Indiana Department of State Revenue will recognize credits taken on Individual, Fiduciary, and Corporation Income Tax Returns which are supported by contributions made to an "institution of higher education located in Indiana." In order to qualify for this credit, the contribution must be made directly to the institution of higher education, or to any corporation or foundation organized and operated solely for the benefit of any such institution of higher education, and/or to the Associated Colleges of Indiana.

However, any shareholder of a sub "S" corporation which makes a contribution to an accredited Indiana college, university or institution will not be eligible for college credit. This is because charitable contributions do not flow through to the shareholders for Federal tax purposes. Organizations which are not subject to the adjusted gross income tax, such as banks and savings and loan associations, may not claim the college credit.

The institution of higher education must grant an associate, bachelors, masters, or doctoral degree, or any combination thereof, and the school must be accredited to grant such degrees by one of the following agencies:

(1) North Central Association of Colleges and Secondary Schools;

(2) Indiana Department of Public Instruction; or

(3) American Association of Theological Schools.

Allowable Credit for Individuals, Trusts and Estates

An individual is entitled to a tax credit for gifts equal to fifty percent (50%) of the aggregate amount thereof, but not exceeding the lesser of:

(1) $100.00 for a single return, trust or estate;

(2) $200.00 for a joint return; or

(3) The individual's adjusted gross income tax liability for the year in which the gifts are made, less the amount of all other credits allowable against such tax under the Adjusted Gross Income Tax Act. With respect to the third limitation, the other credits presently allowed by the Act against adjusted gross income tax include the credit for taxes paid to other states and the credit for the elderly.

In no event will a tax credit for contribution to educational institutions in excess of tax owing in any year give rise to an overpayment of tax to be refunded.

A separate schedule, CC-40, will be available for reporting and claiming this credit. The schedule must be attached to the individual return, Form IT-40, the nonresident return, Form IT-40PNR, or the Fiduciary Return, Form IT-41.

Allowable Credit for Corporations

A corporation is entitled to a tax credit for gifts to institutions of higher education equal to fifty percent (50%) of their total gifts in that year, but not to exceed the lesser of (1) ten per cent (10%) of the corporation's adjusted gross income tax for the year in which the gifts are made; (2) the sum of $1000.00; or (3) the corporation's adjusted gross income tax for the year in which the gifts are made less the amount of all other credits allowable against such tax under the Adjusted Gross Income Tax Act. In no event will the sum of the credit for contributions to institutions of higher education and the credit for the Hard Core Unemployed be in excess of the tax due.

The tax credit may be applied against either the gross income tax or the adjusted gross income tax. The credit computation is based on the adjusted gross income tax. Thus, a corporation which has no taxable adjusted gross income would not be allowed this tax credit. A separate schedule, Form CC-20, is available for reporting and claiming this credit. The schedule must be attached to the corporation return, Form IT-20.

Following is a listing of the eligible schools in which the contributor may qualify for the college credit:

INSTITUTION	CITY
Ancilla College	Donaldson
Anderson College	Anderson
The Associated Colleges of Indiana	Indianapolis
Ball State University	Muncie
Bethel College	Mishawaka
Butler University	Indianapolis
Calumet College	Whiting

Catholic Seminary Foundation of Indianapolis (St. Maur's Seminary)	Indianapolis
Christian Theological Seminary	Indianapolis
Concordia Senior College	Fort Wayne
DePauw University	Greencastle
Earlham College	Richmond
Fort Wayne Bible College	Fort Wayne
Franklin College of Indiana	Franklin
Goshen Biblical Seminary	Elkhart
Goshen College	Goshen
Grace Theological Seminary and Grace College	Winona Lake
Hanover College	Hanover
Huntington College	Huntington
Indiana Central University	Indianapolis
Indiana Institute of Technology	Fort Wayne
Indiana State University	Terre Haute
Indiana University	Bloomington and Regional Facilities
Indiana Vocational Technical College	Indianapolis and Regional Facilities
Manchester College	North Manchester
Marian College	Indianapolis
Marion College	Marion
Mennonite Biblical Seminary	Elkhart
Northwood Institute of Indiana	West Baden
Oakland City College	Oakland City
Purdue University	West Lafayette and Regional Campuses
Rose-Hulman Institute of Technology	Terre Haute
St. Francis College	Fort Wayne
St. Joseph College	Rensselaer
St. Mary-of-the-Woods College	Terre Haute
St. Mary's College	Notre Dame
St. Meinrad College	St. Meinrad
Taylor University	Upland
Tri-State College	Angola
University of Evansville	Evansville
University of Notre Dame	Notre Dame (South Bend)
Valparaiso University	Valparaiso

Vincennes University	Vincennes
Wabash College	Crawfordsville

This is not necessarily a complete listing and taxpayers having any questions as to the eligibility of any particular contribution for credit should petition the Department in writing. *(Department of State Revenue; Reg 6-3-3-5(010); filed Oct 15, 1979, 11:15 am: 2 IR 1537; errata, 2 IR 1743)*

45 IAC 3.1-1-80 Definition of household income for circuit breaker credit and credit for elderly and disabled (Repealed)

Sec. 80. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-1-81 Definition of homestead (Repealed)

Sec. 81. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-1-82 Circuit breaker credit eligibility (Repealed)

Sec. 82. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-1-83 Circuit breaker credit filing requirements (Repealed)

Sec. 83. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-1-84 Circuit breaker credit computation (Repealed)

Sec. 84. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-1-85 Credit for motor fuel tax (Repealed)

Sec. 85. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-1-86 Credit for neighborhood assistance contributions

Authority: IC 6-8.1-3-3
Affected: IC 6-3.1-9

Sec. 86. Neighborhood Assistance Credit. Credit will be allowed to individuals and corporations who make contributions to individuals, groups, or neighborhood organizations in "economically disadvantaged areas" as defined by the Indiana Department of Commerce in Regulation 104-1(K) of the Neighborhood Assistance Credit Program Regulations.

Contributions may consist of cash or goods, job training, education, community services, counseling and advice, crime prevention, housing facilities, emergency assistance, medical care or recreational facilities. Regulation 105-1 of the Neighborhood Assistance Credit Program Regulations issued by the Indiana Department of Commerce stipulates that contributions other than those of cash or goods must be "conducted on a not-for-profit basis only by not-for-profit organizations." *(Department of State Revenue; Reg 6-3-3.1-1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1542; errata, 2 IR 1743)*

45 IAC 3.1-1-87 Limitation on credit for neighborhood assistance

Authority: IC 6-8.1-3-3
Affected: IC 6-3.1-9

Sec. 87. Limitation of Neighborhood Assistance Credit. The individual or corporation who makes the contribution in the approved program may take a credit of fifty percent (50%) of the amount invested for the taxable year. If the contribution is of a non-monetary nature, the allowable credit will be 50% of the fair market value at the time of the contribution. In no case, however, may the credit exceed $25,000.00.

EXAMPLE: F.U.G. Corporation made an $80,000.00 qualified contribution during the taxable year to the G.U.F. Neighborhood Organization, which is a tax exempt organization for Federal and State tax purposes. The allowable Neighborhood Assistance Credit for F.U.G. Corporation is determined as follows:

Amount contributed	$80,000.00
50% of contribution	40,000.00
Allowable credit	25,000.00*

*[The allowable credit is the lesser of $25,000.00 or 50% of the contribution.] *(Department of State Revenue; Reg 6-3-3.1-4(010); filed Oct 15, 1979, 11:15 am: 2 IR 1542; errata, 2 IR 1743)*

45 IAC 3.1-1-88 Claim for neighborhood assistance credit

Authority: IC 6-8.1-3-3
Affected: IC 6-3.1-9

Sec. 88. Procedure for Claiming Neighborhood Assistance Credit. Any business, firm, or individual that desires to claim the Neighborhood Assistance Credit must first apply to the Indiana Department of Commerce, requesting approval of the program. Such application should set forth the program to be conducted, the disadvantaged area(s) selected, the amount to be invested, and the plans for implementing the program.

After receiving approval of the program the applicant must then file Form NC-10, Neighborhood Assistance Credit Application, with the Indiana Department of Revenue. Form NC-10 is used to determine the tentative credit amount to be claimed, and must contain the Certificate of Approval from the Department of Commerce.

The Department of Revenue will then make a determination on the credit application and return to the taxpayer Form NC-20, Notice of Department Decision on Neighborhood Assistance Credit Application, which will set forth the approved credit amount, if any, to be claimed by the taxpayer. If the application is disapproved, a reason for the disapproval will be on Form NC-20.

On approved applications, Form NC-30, Statement of Payment for Neighborhood Assistance Credit, must be filed with the Department of Revenue within thirty (30) days after the taxpayer's receipt of Form NC-20. This form must be accompanied by the taxpayer's proof of payment substantiating that payment has been made on an approved program.

A final statement, Form NC-40, Tax Return Attachment to Support Neighborhood Assistance Credit Claimed, must then be attached to the Indiana Income Tax Return filed by the taxpayer, in order to provide a reference to the claimant's file. *(Department of State Revenue; Reg 6-3-3.1-5(010); filed Oct 15, 1979, 11:15 am: 2 IR 1543; errata, 2 IR 1743)*

45 IAC 3.1-1-89 Limitation on total neighborhood assistance credits granted by state

Authority: IC 6-8.1-3-3
Affected: IC 6-3.1-9

Sec. 89. Maximum Amount of Neighborhood Assistance Credit Allowable. The total amount of Neighborhood Assistance Credit in any State fiscal year (July 1-June 30) may not exceed one million dollars. When the total credits approved equal one million dollars, no applications thereafter will be approved. Due to this limitation, applications for the credit will be considered in the chronological order in which they are filed. *(Department of State Revenue; Reg 6-3-3.1-6(010); filed Oct 15, 1979, 11:15 am: 2 IR 1543; errata, 2 IR 1743)*

45 IAC 3.1-1-90 Time extensions for filing returns (Repealed)

Sec. 90. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-91 Declarations of estimated tax by individuals

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-4

Sec. 91. Declarations of Estimated Tax By Individuals. An individual who does not have Indiana Adjusted Gross Income Tax or County Adjusted Gross Income Tax withheld from his wages on a regular basis is required to file a Declaration of Estimated Tax if he owes $100.00 or more of Indiana Adjusted Gross Income Tax or County Adjusted Gross Income Tax. Specifically, he will declare the amount of tax estimated for the current year and submit quarterly payments to prepay the tax. Also, individuals who have tax withheld by an employer are required to file a declaration if they have income other than wages in excess of $5,000.00 which is not covered by withholding. The following schedule illustrates the determination of the declared amount:

(A) Total Estimated Income in current year . . . . . $____
(B) Total Exemption . . . . . $____
(C) Amount subject to tax (line A less line B) . . . . . $____
(D) Amount of State Tax (line C × 2%) . . . . . $____
(E) Estimated State Tax Withheld by employer (if any) . . . . . $____
(F) Amount of State Declaration (line D less line E) (Enter this amount on Form IT-40, in the space for total State Estimated Tax) . . . . . $____
(G) Estimated Amount of County Tax (line C × appropriate county tax rate) . . . . . $____
(H) Estimated County Tax Withheld by employer (if any) . . . . . $____
(I) Amount of County Declaration (line G, less line H) (Enter this amount on Form IT-40 in the space provided for County Declaration of Estimated Tax) . . . . . $____

An individual subject to estimated tax must, when filling out his tax return for the previous year, make a Declaration of Estimated Tax for the current year; i.e., 1978 estimated tax must be declared and shown on the 1977 income tax return. The taxpayer is then required to add one fourth (1/4) of the declared estimated tax to his tax due for the preceding year. The remainder of his estimated tax due is to be made in three quarterly payments. The subsequent quarterly payments are to be made on voucher form ES-40.

If a taxpayer has estimated his tax in the previous year he will receive vouchers and envelopes with his return for quarterly payments of his estimated tax. If this is his first year to estimate, the vouchers and envelopes will be sent to him after he makes a declaration on his individual income tax return.

EXAMPLE: Mr. Smith, while completing his 1977 Indiana return in March of 1978, determines that he will owe the State $100.00 of Indiana Adjusted Gross Income Tax for 1978. He then declares $100.00 for 1978 on the appropriate line of his 1977 return and includes $25.00 [one fourth (1/4) of his 1978 estimated tax] with his payment of 1977 taxes. He pays the remaining three fourths (3/4) of his estimated tax in three (3) quarterly payments of $25.00 (June 15, September 15, and January 15).

A declaration may be made after the Individual Income Tax Return has been filed by filling out a voucher which the Department of Revenue will furnish on request, along with a remittance in the appropriate amount. To amend an estimate, a voucher should be submitted with the necessary changes and remittance reflecting same. No other form is necessary.

However, an estimated tax payment may not be made on a prior-year return. If the taxpayer is not filing a current-year return, then estimated payments must be made on a voucher. NOTE: The Department does not send quarterly notices of estimated tax due, but rather it is the responsibility of the taxpayer to send in his payments with the appropriate voucher.

PENALTIES:

A penalty may be assessed for failure to make sufficient payment of estimated tax. Penalty is computed at a rate of 8% per annum on the amount of unpaid tax.

EXCEPTIONS:

If at least two-thirds (2/3) of total gross income from all sources is attributable to farming or fishing (including oyster farming) a declaration of estimated tax need not be made if the individual's income tax return is filed any time on or before March 1 of the succeeding year (IRC §6073b).

In addition, the Department will not assess penalty for underpayment of estimated tax if the taxpayer falls within the exceptions of IRC §6654d. *(Department of State Revenue; Reg 6-3-4-4(010); filed Oct 15, 1979, 11:15 am: 2 IR 1544; errata, 2 IR 1743)*

45 IAC 3.1-1-92 Declarations of estimated tax by corporations

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-4

Sec. 92. Declaration of Estimated Tax By Corporations. Corporations are required under Indiana law to make estimated payments of both gross and adjusted gross income tax, as well as supplemental net income tax.

Any corporation whose gross income tax liability exceeds $250.00 ($25.00 prior to January 1, 1978) per quarter is required to file a Corporation Quarterly Income Tax Return, Form IT-6, within thirty (30) days after the close of the quarter. Failure to make quarterly payments of gross income tax will result in a 10% penalty together with interest at 8% per annum.

Corporations are required to make quarterly payments of the adjusted gross income tax when the estimated annual amount of such tax exceeds the gross income tax by more than $1,000.00. Quarterly payments of supplemental net income tax are required when the estimated annual amount of such tax exceeds $1,000.00. Failure to make quarterly payments will result in an 8% penalty as explained in IC 6-3-4-4(c).

Tax booklets which include the necessary quarterly and annual tax returns will be mailed automatically once the corporation is established on the mailing list after the initial return is filed.

Use of the correct Federal Identification Number is most important in assuring credit to the proper account. If the I.D. number is changed in any way, an explanation for the change should be sent to the Department immediately.

All taxpayers are cautioned that fifth quarter or supplemental payments with extensions are to be clearly designated as such so that the payment is not applied to a subsequent taxable year. In addition, all taxpayers should note that refunds derived from filing the annual corporate income tax return cannot be applied to the next taxable year's quarterly estimated liability. If a taxpayer has overpaid quarterly payments, the credit must be claimed on the annual corporate return to obtain a refund. If a taxpayer remits one check for the entire remainder of a year's estimated liability, no further quarterly returns should be filed with the Department after the date of the payment. It is important to note that all checks remitted to the Department should be accompanied by a return or a complete explanation for the payment.

EXAMPLES OF QUARTERLY INCOME TAX PAYMENTS

EXAMPLE A

(1) Estimated Adjusted Gross Income for the quarterly period	$1,025,000	
(2) Estimated Adjusted Gross Income Tax (3%)	30,750	
(3) Gross Income Tax	30,250	
(4) Excess Line 2 minus Line 3	500	
Quarterly Tax Payments–Gross Income Tax	$30,250	
Adjusted Gross Income Tax	500	
Total		$30,750.00
Supplemental Net Income Tax–		
Supplemental Net Income for the quarterly period–Subtract the greater of the estimated adjusted gross income tax or gross income tax from adjusted gross income	$994,250.00	

Supplemental Net Income Tax (3%)	29,827.50	
Quarterly tax payment		$29,827.50
Total Quarterly Payment		$60,577.50

EXAMPLE B

(1) Estimated Adjusted Gross Income for the quarterly period	$1,000,000.00	
(2) Estimated Adjusted Gross Income Tax (3%)		30,000.00
(3) Gross Income Tax	31,250.00	
(4) Excess Line 2 minus Line 3	-0-	
Quarterly Tax Payment–Gross Income tax	$31,250.00	
Adjusted Gross Income Tax	-0-	
Total		$31,250.00
Supplemental Net Income Tax		
Supplemental Net Income for the quarterly period–Subtract the greater of the estimated adjusted gross income tax or gross income tax from adjusted gross income	$968,750.00	
Supplemental Net Income Tax (3%)	$29,062.50	
Quarterly tax payment		$29,062.50
Total Quarterly Payment		$60,312.50

PENALTIES

Eight percent (8%) penalty per annum shall be assessed by the Department on corporations failing to make payments as required of the adjusted gross income tax and the supplemental net income tax; however, no penalty shall be assessed as to any quarterly payment which equals or exceeds twenty percent (20%) of the final tax liability for such taxable year, or as to any quarterly payment which shall equal or exceed twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year. The eight percent (8%) per annum penalty as to any underpayment of tax on a quarterly return shall only be assessed on the difference between the actual amount paid by the corporation on such quarterly return and twenty-five percent (25%) of the corporation's final adjusted gross income tax liability or supplemental net income tax liability, as the case may be for such taxable year.

NOTE:

The information contained herein with regard to the adjusted gross income tax and the supplemental net income tax is not applicable to municipal corporations and not-for-profit organizations which are exempt from Federal income taxes.

(Department of State Revenue; Reg 6-3-4-4(010); filed Oct 15, 1979, 11:15 am: 2 IR 1545; errata, 2 IR 1743)

45 IAC 3.1-1-93 Copies of federal returns; social security numbers; confidentiality (Repealed)

Sec. 93. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-94 Notice of change in federal return or liability

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-6

Sec. 94. Notice of Modification. All taxpayers, except resident individuals, are required to file a notice with the Department within 120 days after a modification of a Federal income tax return or a modification of Federal income tax liability explaining the modification. For individual taxpayers, Form IT-40X must be used for this purpose. Taxpayers other than individuals should use the proper annual income tax return, and should mark it “amended.” *(Department of State Revenue; Reg 6-3-4-6(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1546; errata, 2 IR 1743)*

45 IAC 3.1-1-95 Prescribed forms (Repealed)

Sec. 95. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-96 Copies of forms (Repealed)

Sec. 96. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-97 Returns and reports by withholding agents

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4

Sec. 97. Withholding Agent's Returns and Reports to the Department. Employers who make payments of wages subject to the Adjusted Gross Income Tax Act, and who are required to withhold Federal taxes pursuant to the Internal Revenue Code (USC Title 26), are required to withhold from employees' wages Adjusted Gross and County Adjusted Gross Income Tax.

Withholding agents who are required to withhold Indiana Adjusted Gross Income Tax and County Adjusted Gross Income Tax (where applicable), shall make return of and payment to the Department monthly whenever the amount of tax due, for either County and State, exceeds an aggregate of $50 per month with such payment due on the thirtieth (30th) day of the following month. Where the aggregate amount of tax due under the Adjusted Gross Income Tax or County Adjusted Gross Income Tax does not exceed $50 per month, payment and return of the amount of tax due shall be made quarterly, with such payment due on the last day of the month following the end of the quarter. The following criteria should be used:

(1) A withholding agent who falls within the monthly reporting system, due to maintaining an aggregate of fifty dollars ($50) per month, but who in any month thereafter may maintain an aggregate of less than fifty dollars ($50) per month, should remit that lesser amount on a monthly basis so as to maintain the status of being on the monthly system.

(2) A withholding agent who falls within the quarterly reporting system, due to not maintaining an aggregate of fifty dollars ($50) per month, but who in any month thereafter does maintain an aggregate of fifty dollars ($50) per month, should then, and thereafter, begin reporting and making returns on a monthly basis and thereby maintain the status of being on the monthly system.

EXAMPLES:

(1) A withholding agent withheld $45.00 state income tax and $20.00 county income tax during July, 1978. Since the aggregate withheld exceeds $50.00 per month the withholding agent falls within the monthly system and must submit the return and make payment for the month of July no later than August 30, 1978.

(2) A withholding agent withheld $30.00 state income tax and $10.00 county income tax during July, 1978. Since the aggregate does not exceed $50.00 per month the withholding agent must submit a return and make payment on a quarterly basis with such return and payment due on or before the last day of the month following the end of the quarter.

All amounts deducted and withheld by an employer shall immediately upon deduction become the money of the State. All employers who make a declaration of withholding must provide each employee annually, but not later than January 30, a statement on Form W-2 of the total amount of wages paid, and adjusted gross and county adjusted gross income tax withheld. In the case of delinquency or nonpayment of withholding tax, the employer is liable for such tax, penalties, and interest. If the employer is a corporation or partnership, all officers, employees, or members under a duty to withhold and remit adjusted gross income tax are personally liable for such taxes, penalty, and interest.

The withholding provisions of this Act apply to both resident and nonresident employers having employees resident and/or working in the state (except employees resident in states having reciprocal agreements with Indiana). *(Department of State Revenue; Reg 6-3-4-8(010); filed Oct 15, 1979, 11:15 am: 2 IR 1547; errata, 2 IR 1743)*

45 IAC 3.1-1-98 Withholding and returns by interstate transportation companies

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4

Sec. 98. Withholding of Compensation Paid To Employees of Interstate Transportation Companies. The following

policy prescribed by the Department applies to the withholding of state income tax on transportation companies including railroads, motor carriers, airlines, and water carriers on compensation paid to their employees who work in more than one state.

Transportation companies who employ Indiana residents in this State will continue to withhold the Indiana Adjusted Gross Income Tax as prescribed under Section 408 of the Indiana Adjusted Gross Income Tax Act of 1963, as amended. In the event that the Indiana resident earns more than 50% of his compensation outside of Indiana the employer, under Public Law 91-569, is required to withhold the tax for the state in which more than 50% of the compensation is earned; however, if more than 50% of the compensation is not earned in any state, the employer must withhold on the basis of residency. If tax is withheld on an Indiana resident and remitted to a state other than Indiana, the employer must file an annual information return reporting any wages on those Indiana residents subject to the withholding provisions of another state.

It is the opinion of this Department that the 50% test prescribed under this Federal Act does not apply to Indiana residents employed by a railroad, motor carrier, airline or water carrier in the States of Georgia, Illinois, Kentucky, Michigan, Mississippi, North Carolina, Ohio and Wisconsin. Since Indiana has reciprocal tax agreements with the above states for transportation company employees, any tax assessed on an Indiana transportation employee other than Indiana adjusted gross income tax would be inoperative as a result of these agreements. Nonresident transportation employees who are employed in Indiana and receive more than 50% of their compensation for services performed in this state, are subject to the withholding of the Indiana adjusted gross income tax; however, if the employees subject to Public Law 91-569 are residents of Georgia, Illinois, Kentucky, Michigan, Mississippi, North Carolina, Ohio or Wisconsin, these nonresident employees are not subject to the withholding tax provisions in accordance with the previously mentioned reciprocal agreements. Nonresident employees who are residents of those states having a reciprocal agreement with Indiana should file a certificate of residency with the employer, and the employer should withhold on the basis of residency.

Information returns are required to be submitted by the transportation company to the state of residency of those employees subject to withholding tax as a nonresident employee.

In determining whether more than 50% is earned in the state of employment, the measurement in determining compensation on the various workers is as follows:

Railroad employees assigned to track borne vehicles = Mileage traveled in a state

Maintenance and terminal employees = Time worked in a state

Motor Carrier employees operating vehicle = Mileage traveled in a state

Employees operating a water carrier = Time worked in a state

Employees operating an aircraft = Scheduled flight time

(Department of State Revenue; Reg 6-3-4-8(020); filed Oct 15, 1979, 11:15 am: 2 IR 1547; errata, 2 IR 1743)

45 IAC 3.1-1-99 Withholding for church and clergy

Authority: IC 6-8.1-3-3

Affected: IC 6-3-4

Sec. 99. Withholding Instructions for Church and Clergy. Ministers are not subject to the withholding tax but may allow their tax to be withheld on a voluntary basis. Those ministers whose Indiana adjusted gross income tax liability is $100.00 in excess of any taxes withheld must file a Declaration of Estimated Tax on Form IT-40ES by April 15.

Every withholding agent who employs any persons in the performance of personal service is subject to the same rules and regulations contained in the Internal Revenue Code. Even though a minister may or may not choose to have the tax withheld on his own salary, others employed by the church in the performance of a personal service must pay withholding tax and the church would act as the withholding agent.

Liability of Withholding Agent:

(1) Each church is liable for the tax which is required to be withheld.

(2) Each church is required to keep correct records of each person's income and tax withheld.

(3) At the end of every calendar year, each church is required to give each person a statement of his income and tax withheld.

(4) Each church is required to make quarterly returns on forms prescribed by the Department, such forms to be mailed, together with remittance of the tax to the Department of Revenue. *(Department of State Revenue; Reg 6-3-4-8(030); filed Oct 15, 1979, 11:15 am: 2 IR 1548; errata, 2 IR 1743)*

45 IAC 3.1-1-100 Withholding from certain types of employees and incomes

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1-6-1; IC 6-3-4-8; IC 6-3-4-8.1; IC 6-3-4-9; IC 6-8-8-1

Sec. 100. Withholding Information For Part-Time Employees and Other Miscellaneous Withholding Requirements.

WITHHOLDING FROM INCOME OF PART-TIME OR "SUMMER" EMPLOYEES

Withholding agents are required to withhold tax, at the applicable rate stated on the rate schedules, from the income of part-time or "summer" employees just as though they were full-time or permanent employees. The fact that the employer or the employee are reasonably, or even absolutely, certain that the employee will not earn income in excess of his or her $1,000.00 exemption has no bearing on withholding the tax by the withholding agent. Similarly, the Internal Revenue Service rules which allow the employee to waive withholding, for federal tax purposes, when the income is not expected to be in excess of the Federal filing requirements and income allowances, have no bearing on withholding taxes from the income of part-time employees for Indiana tax purposes.

WITHHOLDING FROM SUPPLEMENTAL UNEMPLOYMENT COMPENSATION BENEFIT INCOME

Supplemental Unemployment Compensation Benefits paid to an individual are treated as if they were income, to the extent such benefits are includable in the gross income of such individuals, and therefore are subject to withholding by the withholding agent for Indiana tax purposes.

WITHHOLDING FROM PENSION INCOME AND ANNUITY PAYMENTS

Withholding is not required on pension and annuity payments that meet certain qualifications of the Internal Revenue Service, unless the recipient requests that federal income tax be withheld. If such a request is made, the payor must also withhold and remit Indiana adjusted gross income tax.

Pensions and annuities that do not meet the Internal Revenue Service qualifications are considered to be deferred compensation and, therefore, require withholding in the same manner as for wages and salaries.

WITHHOLDING FROM AGRICULTURAL OR CASUAL EMPLOYEES

Withholding agents are not required to withhold Indiana state income tax from payments made to agricultural laborers or casual laborers, such as yardworkers, or domestic employees. Withholding of taxes in such cases must be agreed to by both employer and employee. If the employer does not withhold taxes he should report total annual payments made to each such employee on the Federal Form 1099, or the Indiana Form IT-12A.

WITHHOLDING FROM ATHLETES AND ENTERTAINERS

Athletes and entertainers generally perform under one of the three following types of contracts:

(1) Employees of the promoter or organizer

(2) "Independent contractors"

(3) Employees of a "production company"

The different types of contracts have different withholding requirements and thus, must be treated separately.

(1) The first situation involves athletes and entertainers performing on a salaried basis for example, basketball, hockey, and baseball players. These performers are under contract for a specific time period and they receive a predetermined salary regardless of the number or the location of performances.

Based on these facts, athletes employed by an Indiana professional sports team or an Indiana promoter incur a tax liability on their entire salary. No apportionment will be permitted for out-of-state appearances because the athlete's compensation is unaffected by such appearances.

Because these performers are considered to be employees, withholding is required on their salaries in accordance with the provisions of Regulation 6-3-4-8(010) *[45 IAC 3.1-1-97]*. Because this compensation is considered to be salary, the reciprocal agreements defined in Regulation 6-3-5-1 (010) *[45 IAC 3.1-1-115]* are applicable.

(2) The second situation involves performers who directly receive payment for Indiana performances. This situation might include performers in tennis and golf tournaments, nightclubs, and concerts. These performers are not

engaged in an employer-employee relationship.

Based on these facts, "independent contractors" incur a tax liability by performing within Indiana. Independent contractors who are Indiana residents are taxable on their entire income, but may receive a credit for taxes paid to other states in accordance with Regulation 6-3-3-3(a)(010) *[45 IAC 3.1-1-74]*. Because this income is not wages or salary, reciprocity will not apply.

Withholding is not required on this income since it is not wages or salary. These individuals are, however, required to make estimated tax payments if they expect to have an Indiana income tax liability of $100 or more. (See Regulation 6-3-4-4(010) *[45 IAC 3.1-1-92]*.

There are several means of enforcing the income tax liability of an independent contractor. The Department may issue a jeopardy assessment against a taxpayer in accordance with the provisions of Regulation 6-3-6-1(g)(010). This same regulation allows the Department to accept a surety bond from the taxpayer. In addition, the Reciprocal Full Faith and Credit Act (IC 6-8-8-1 et seq.) authorizes the Department to bring suit against a taxpayer in his or her state of residence.

(3) The third situation arises when a performer organizes a "production company" to receive payment for his performances rather than receiving payment directly. The production company then pays the performer a salary.

The withholding requirements for payments made to a production company vary. If the company is incorporated, gross income tax must be withheld from any payments, as provided in IC 6-2-1-22(f) *[Repealed by P.L.77-1981, SECTION 22. Recodified as IC 6-2.1-6-1.]* If the company is a partnership or a sole proprietorship, withholding is not required; however, the partners or proprietor are required to make estimated tax payments as provided in Regulation 6-3-4-4(010) *[45 IAC 3.1-1-91]*. Enforcement of the tax liability in case of a failure to make estimated tax payments is accomplished through the means outlined above for enforcing the liability of an independent contractor.

The withholding requirements for payments made by a production company to its employees vary. If the employees are paid on a salaried basis, their situation is analogous to that of professional team athletes explained above, and withholding is required if the production company has an Indiana business situs, or if the employee is an Indiana resident. Payments made to those who are not employees i.e., payments made on a per-performance basis, do not require withholding because this income is not wages. The recipient must make estimated tax payments, and enforcement is identical to the enforcement of the liability of independent contractors. *(Department of State Revenue; Reg 6-3-4-8(040); filed Oct 15, 1979, 11:15 am: 2 IR 1548; errata, 2 IR 1743)*

45 IAC 3.1-1-101 Annual reconciliation of employers' withholding tax

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4

Sec. 101. Annual Reconciliation of Employers Withholding Tax, Form WH-3. Each withholding agent shall send or deliver the state copy of each withholding tax statement prepared by him, to the Department not later than the last day of February, immediately following the end of the calendar year. They shall be attached to a report showing the amount of Indiana Adjusted Gross Income Tax, if any, withheld and paid to the Department for the calendar year as indicated by the monthly or quarterly returns and a reconciliation with the total amount of tax withheld during this calendar year as reflected by the withholding statement. The County Adjusted Gross Income Tax shown on Form WH-3 should be indicated in the same manner as on Form WH-1, with no breakdown by county of individual tax withheld. Only on Form W-2 will the county tax be indicated as previously described. All reports and returns shall be on a calendar year basis, even though the withholding agent is on a fiscal year reporting basis. *(Department of State Revenue; Reg 6-3-4-8(050); filed Oct 15, 1979, 11:15 am: 2 IR 1550; errata, 2 IR 1743)*

45 IAC 3.1-1-102 Changes in form WH-4

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4

Sec. 102. Refiling of State Form WH-4. The Employee's Withholding Exemption and County Residence Certificate (Form WH-4) must be refiled with the employer to show any change in residence or number of exemptions.

Change of Residence

All employees who change their county of residence or their county of principal work activity are required to file a new state Form WH-4 by January 1 of the following year.

Change in Exemptions

You may file a new WH-4 at any time if the number of your exemptions increase. You must file a new WH-4 within 10 days if the number of exemptions previously claimed by you decreases for any of the following reasons:

(a) Your wife (or husband) for whom you have been claiming an exemption is divorced or legally separated, or claims her (or his) own exemption on a separate certificate.

(b) The support of a dependent for whom you claim an exemption is taken over by someone else, so that you no longer expect to furnish more than half the support for the year.

(c) You find that a dependent for whom you claim an exemption will receive $750.00 or more of income of his own during the year.

Other decreases in exemptions such as the death of a spouse or a dependent, do not affect your withholding until the next year, but require the filing of a new WH-4 by December 1 of the year in which they occur. *(Department of State Revenue; Reg 6-3-4-8(060); filed Oct 15, 1979, 11:15 am: 2 IR 1550; errata, 2 IR 1743)*

45 IAC 3.1-1-103 Refund or credit for excess withholding

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4

Sec. 103. Refunds of Excess Withholding and Income Tax Credits. If the amount of withholding exceeds an employee's tax as imposed by these regulations *[45 IAC 3.1]*, the Indiana Department of Revenue will refund the amount of excess withholding deduction; however, such excess or part thereof may be applied against any outstanding claim or liability which the employee owes the Department. Neither will a refund of excess withholding be made to an employee who fails to file his Indiana Individual Income Tax Return within two (2) years from its initial due date, nor will any tax refund be made for an amount less than one dollar ($1.00).

An excess withholding deduction in no way relieves any employee from the obligation of filing an Indiana Individual Income Tax Return by the fifteenth day of the fourth month following the close of the individual's taxable year. In the case of withholding deductions not exceeding or not equaling the amount of tax due, the unpaid tax must be paid on the due date of the return. *(Department of State Revenue; Reg 6-3-4-8(070); filed Oct 15, 1979, 11:15 am: 2 IR 1550; errata, 2 IR 1743)*

45 IAC 3.1-1-104 Information returns (Repealed)

Sec. 104. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-105 Annual return of partnership or trust fund

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-10; IC 6-3-4-11

Sec. 105. (a) A partnership must file an annual return, IT-65, with the department, disclosing each partner's distributive share of partnership income, on or before the fifteenth day of the fourth month following the close of the partnership's accounting year. Any partnership doing business in Indiana or deriving gross income from sources within Indiana is required to file the return.

(b) As used in this section, “partner's distributive share” means the amount determined under Section 704 of the Internal Revenue Code and its prescribed regulations before any modifications required by Indiana tax statutes.

(c) A Form IT-65 must be filed with Indiana by a bank with common trust funds filing a Form 1065 for federal income tax purposes. When reporting for Indiana purposes, a bank with common trust funds must comply with the provisions of Regulation 1.6032-1 of the Internal Revenue Code. *(Department of State Revenue; Reg 6-3-4-10(010); filed Oct 15, 1979, 11:15 a.m.: 2 IR 1551; errata, 2 IR 1743; filed May 13, 1993, 5:00 p.m.: 16 IR 2344)*

45 IAC 3.1-1-106 Partner's distributive share

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-2-2; IC 6-3-4-11

Sec. 106. (a) A partnership is not subject to the adjusted gross income tax. The partners will include their share of partnership income whether distributed or undistributed on their separate or individual returns.

(b) An individual will report as follows:

(1) The distributive share of a resident partner will be reported in total no matter where the partnership's business is located or in which states it does business.

(2) The distributive share of a nonresident partner will be reported after apportionment to determine the partnership income derived from sources within Indiana. This determination will be accomplished by use of the apportionment formula described in IC 6-3-2-2(b).

(3) A resident partner's distributive share of income will be adjusted by the partner's proportionate share of the partnership's income that is exempt from taxation under the Constitution and statutes of the United States and by the partner's proportionate share of the partnership's deductions allowed or allowable under Section 62 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States.

(4) A nonresident partner's distributive share of income will be adjusted by the partner's proportionate share of the partnership's income that is exempt from taxation under the Constitution and statutes of the United States and by the partner's proportionate share of the partnership's deductions allowed or allowable under Section 62 of the Internal Revenue Code for taxes based on or measured by income levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States determined by use of the apportionment formula described in IC 6-3-2-2(b).

(c) A corporate partner will report its share in accordance with section 153 of this rule. *(Department of State Revenue; Reg 6-3-4-11(010); filed Oct 15, 1979, 11:15 a.m.: 2 IR 1551; errata, 2 IR 1743; filed May 13, 1993, 5:00 p.m.: 16 IR 2344)*

45 IAC 3.1-1-107 Partnership withholding requirements

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1; IC 6-3-2-2; IC 6-3-4-12; IC 6-3.5

Sec. 107. (a) A partnership is required to withhold income taxes at the rates provided for under IC 6-2.1, IC 6-3, and IC 6-3.5 on any nonresident partner's distributive share of partnership income at the time the income is paid or credited to such partner as follows:

(1) For an individual partner, the adjusted gross income tax withheld shall be based on Indiana source income only, as determined by use of the apportionment formula described in IC 6-3-2-2(b), if applicable. This withholding requirement does not apply to withdrawals from the partner's drawing accounts, but applies to distributions to their accounts in the form of credits or payments based on anticipated profits or actual current profits.

(2) For a partner other than an individual partner, the income tax withheld may be calculated using any reasonable method designed to reflect the ultimate tax liability due Indiana because of the partnership's activities. As used in this section, “nonresident corporate partner” does not include a foreign corporation qualified to do business in Indiana.

(b) The partnership shall file a return and pay the tax on a monthly basis. The return and payment are due the thirtieth day of the month following the month for which the tax was withheld. However, if the total income taxes withheld by the partnership are less than fifty dollars ($50) per month, the tax shall be paid and returns remitted quarterly on a calendar year basis, with payment due the last day of the month following the close of the calendar quarter. If a partnership is withholding on a monthly basis but in any month withholds less than fifty dollars ($50), the lesser amount shall be remitted on a monthly basis to maintain the status of monthly reporting.

(c) If the partnership pays or credits amounts to its nonresident partners only one (1) time each year, it will be

permitted to file one (1) return and payment each year. The return and payment are due thirty (30) days after the partnership's year end.

(d) The withholding requirements of IC 6-3-4-12 do not relieve any partnership from filing its annual return, IT-65, nor do they relieve any nonresident partner from filing an annual income tax return.

(e) For individual partners only, a partnership is allowed to file a composite adjusted gross income tax return on behalf of some or all non-Indiana resident partners if the partnership complies with all of the requirements outlined in Income Tax Information Bulletin #72 that is in effect for the taxable year in question. An individual nonresident partner who properly elects to participate in the composite return will not be required to file an individual adjusted gross income tax return. *(Department of State Revenue; Reg 6-3-4-12(010); filed Oct 15, 1979, 11:15 a.m.: 2 IR 1551; errata, 2 IR 1743; filed May 13, 1993, 5:00 p.m.: 16 IR 2345)*

45 IAC 3.1-1-108 Partnership withholding returns

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-8.1; IC 6-3-4-12

Sec. 108. Partnership Withholding Returns. Partnerships required to withhold adjusted gross income tax under IC 6-3-4-12 shall make returns (Form WH-1) with each payment of tax to the Department, disclosing thereon the total amounts paid or credited to nonresident partners, the tax withheld therefrom, and such other information as the Department may require. The partnership must also file an annual withholding return, Form WH-3 (including a copy of the WH-18 furnished to each nonresident) within thirty (30) days of the close of the calendar year. The partnership must furnish Form WH-18 to each nonresident partner not later than thirty (30) days from the close of the calendar year as proof that the tax upon his share of the partnership income has been withheld. *(Department of State Revenue; Reg 6-3-4-12(020); filed Oct 15, 1979, 11:15 am: 2 IR 1552; errata, 2 IR 1743)*

45 IAC 3.1-1-109 Withholding requirements for subchapter S corporations

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-8.1; IC 6-3-4-13

Sec. 109. Subchapter S Corporations–Withholding Requirements. Small business corporations electing Subchapter S status under Internal Revenue Code section 1372 are required to withhold adjusted gross income tax and county adjusted gross income tax on any nonresident shareholder's share of taxable income of the corporation, whether distributed or undistributed, and pay such amounts to the Department in the manner described in Regulation 6-3-4-12(010) *[45 IAC 3.1-1-107]* and (020) *[45 IAC 3.1-1-108]*. Such corporations shall make monthly (or quarterly) and annual returns as provided in Regulation 6-3-4-12(020) *[45 IAC 3.1-1-108]* and furnish a copy of form WH-18 to each nonresident shareholder as provided in that regulation. *(Department of State Revenue; Reg 6-3-4-13(010); filed Oct 15, 1979, 11:15 am: 2 IR 1552; errata, 2 IR 1743)*

45 IAC 3.1-1-110 Consolidated returns of affiliated groups

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-14

Sec. 110. Consolidated Returns. An affiliated group as defined in IC 6-3-4-14(b) may file consolidated returns for Adjusted Gross Income Tax and Supplemental Net Income Tax purposes if the members of the affiliated group consent to follow the provision of IC 6-3-4-14 and the regulations established thereunder, including Federal regulations promulgated pursuant to Internal Revenue Code section 1502 which are incorporated by reference in IC 6-3-4-14. The inclusion of a member of an affiliated group in the consolidated return is deemed to be its consent to the consolidated filing. Once an election is made to file consolidated, a taxpayer must obtain written permission from the Department to change from this method of reporting.

Taxpayers filing consolidated returns should notify the Department of their election to so file by attaching to their first consolidated return a statement indicating which corporations are joining in the return. In addition, a worksheet

must accompany all consolidated returns showing the consolidated income of the affiliates. *(Department of State Revenue; Reg 6-3-4-14(010); filed Oct 15, 1979, 11:15 am: 2 IR 1552; errata, 2 IR 1743)*

45 IAC 3.1-1-111 Membership in affiliated groups; bank holding companies

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2; IC 6-3-4-14

Sec. 111. Affiliated Group. The Adjusted Gross Income Tax Act adopts the definition of "affiliated group" contained in Internal Revenue Code section 1504, except that no member of the affiliated group may be included in the Indiana return unless it has adjusted gross income derived from sources within the state, as that phrase is defined in IC 6-3-2-2. For purposes of this subsection, "Adjusted Gross Income derived from sources within the state" means either income or losses derived from activities within the state.

Domestic International Sales Corporations (DISC'S) which are prohibited under the Internal Revenue Code from filing consolidated returns may not be included in the affiliated group for Indiana adjusted gross income tax purposes.

If any bank is a member of an affiliated group for Federal income tax purposes, it cannot be included as an affiliated member for Indiana adjusted gross income tax purposes, since the banking entity is not subject to the adjusted gross income tax. Any gross income tax liability of a bank must be added separately after the composite tax of the affiliated group has been computed. For supplemental net income tax purposes, the members of an affiliated group, including the banking entity, may compute the supplemental net income tax on a consolidated basis. Since banks are not included in the consolidation under the Adjusted Gross Income Tax Act, a separate schedule must accompany the consolidated return in order to compute the adjusted gross income of the affiliated group and subsequently the supplemental net income tax liability.

In the case of a bank holding company, the holding company may be allowed a special deduction for dividends received from its banking entity for Indiana adjusted gross income tax purposes in accordance with section 243(a)(1) of the Internal Revenue Code. The 100% dividend exclusion for those holding companies filing a consolidated return does not apply since, for Indiana adjusted gross income tax purposes, the banking entity is not taxable under the Act and thus cannot be part of the consolidation. *(Department of State Revenue; Reg 6-3-4-14(020); filed Oct 15, 1979, 11:15 am: 2 IR 1552; errata, 2 IR 1743)*

45 IAC 3.1-1-112 Consolidated returns for other taxes not required

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-14

Sec. 112. Consolidated Indiana Gross Income Tax and Federal Income Tax Returns. Whether an affiliated group is or is not filing Indiana gross and/or Federal income tax returns on a consolidated basis has no bearing on its eligibility to file consolidated adjusted gross income tax returns. However, the Department strongly recommends that taxpayers filing on a consolidated basis for purposes of one tax, do likewise for purposes of all taxes. If returns are filed separately for one tax and consolidated for the other, the burden will be on the taxpayers to provide a complete breakdown of the affiliated corporations' gross, adjusted gross, and supplemental net income tax liabilities, quarter payments, and other credits. *(Department of State Revenue; Reg 6-3-4-14(030); filed Oct 15, 1979, 11:15 am: 2 IR 1553; errata, 2 IR 1743)*

45 IAC 3.1-1-113 Withholding on distributions to nonresident beneficiaries of Indiana trusts and estates

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-15; IC 6-3-6; IC 6-8.1-10

Sec. 113. Withholding on Distributions To Nonresident Beneficiaries of Indiana Trusts and Estates. Beginning January 1, 1978, Indiana trusts and estates distributing income subject to withholding to nonresident beneficiaries are required to withhold adjusted gross income tax from such distribution. "Income subject to withholding" is defined as all income subject to adjusted gross income tax, except interest and dividends. An allowance is made for expenses, administrative fees, a personal exemption, and other allowable adjustments. Examples of income subject to withholding

include farm income, business income, and rents and royalties from Indiana real estate.

These withholding provisions apply only to distributions to nonresident beneficiaries. A beneficiary's residency should be determined at the time of distribution. However, if a resident beneficiary later becomes a nonresident, the fiduciary is required to withhold on all subsequent payments to that beneficiary. Part-year residents and nonresidents should take credit on their adjusted gross income tax returns for any tax withheld.

The withholding rate for these fiduciaries is two percent (2%). Any deficiency in taxes withheld and remitted to the state will subject the trust or estate to the penalties and interest imposed by IC 6-3-6. The Department may, at its option, require the withholding agent to post a bond to ensure payment of the tax. *(Department of State Revenue; Reg 6-3-4-15(010); filed Oct 15, 1979, 11:15 am: 2 IR 1553; errata, 2 IR 1743)*

45 IAC 3.1-1-114 Withholding returns and payments by trusts and estates

Authority: IC 6-8.1-3-3
Affected: IC 6-3-4-15

Sec. 114. Withholding Returns and Remittances of Trusts and Estates. Trusts and estates required to withhold adjusted gross income tax by IC 6-3-4-15 will file monthly returns on Form WH-1. Remittance will be made with the return, and such remittance will be due on the thirtieth day of the month following the month during which the tax was withheld. If the fiduciary cannot determine what part of the distribution is made up of "income subject to withholding," the Department will permit the tax to be remitted when such determination can be made, i.e., at the end of the calendar or fiscal year when the net profits of a business can be determined.

Trusts and estates must furnish to each nonresident beneficiary a Form WH-18 by the thirtieth day of the month following the close of the taxable year. This statement will indicate the total distributions to the beneficiary for the year and the amount of tax withheld, and will accompany the beneficiary's annual return as proof of payment. *(Department of State Revenue; Reg 6-3-4-15(020); filed Oct 15, 1979, 11:15 am: 2 IR 1553; errata, 2 IR 1743)*

45 IAC 3.1-1-115 Reciprocal agreement states

Authority: IC 6-8.1-3-3
Affected: IC 6-3-5-1

Sec. 115. Reciprocity Agreements. Reciprocal income tax agreements now exist between Indiana and the states of Illinois, Kentucky, Michigan, Ohio, Pennsylvania and Wisconsin. The agreements provide that Indiana will not impose its adjusted gross income tax on salaries, wages and commissions earned by legal residents of these states in Indiana and they in turn will not impose their individual income tax on wages, salaries and commissions earned by legal residents of Indiana in those states. Employees resident in any of the above-mentioned states and working in Indiana must submit to their Indiana employer an affidavit as to their legal residence as proof that no withholding of Indiana taxes is required (See Regulation 6-3-3-3(a)(030) *[45 IAC 3.1-1-76]*). *(Department of State Revenue; Reg 6-3-5-1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1553; errata, 2 IR 1743)*

45 IAC 3.1-1-116 Credit against liability instead of refund (Repealed)

Sec. 116. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-117 Payment of refunds; interest (Repealed)

Sec. 117. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-118 Demand for additional taxes (Repealed)

Sec. 118. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-119 Penalty for nonpayment (Repealed)

Sec. 119. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-120 Penalty for fraudulent nonpayment (Repealed)

Sec. 120. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-121 Failure to timely file or pay; penalty (Repealed)

Sec. 121. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-122 Jeopardy assessment and collection (Repealed)

Sec. 122. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-123 Penalty for failure to file information returns (Repealed)

Sec. 123. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-124 Preparation of return by department; penalty (Repealed)

Sec. 124. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-125 Time limitation on assessment by department (Repealed)

Sec. 125. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-126 Proposed assessment of additional tax; protest (Repealed)

Sec. 126. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-127 Hearings on protest of proposed assessment (Repealed)

Sec. 127. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-128 Agreed extension of time for proposed assessment (Repealed)

Sec. 128. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-129 Automatic extension of time for proposed assessment (Repealed)

Sec. 129. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 547)*

45 IAC 3.1-1-130 Warrants for collection of taxes; execution (Repealed)

Sec. 130. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-131 Collection by civil action by department (Repealed)

Sec. 131. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-132 Injunction against continuing business (Repealed)

Sec. 132. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-133 Receivership (Repealed)

Sec. 133. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-134 Cumulative remedies (Repealed)

Sec. 134. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-135 List of unsatisfied warrants (Repealed)

Sec. 135. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-136 Employment of collection attorneys (Repealed)

Sec. 136. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-137 Time limitation on refund claims; assessment; interest (Repealed)

Sec. 137. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-138 Filing refund claim (Repealed)

Sec. 138. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-139 Hearings on refund claims (Repealed)

Sec. 139. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-140 Suit for refund (Repealed)

Sec. 140. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-141 Limited confidentiality of taxpayer information (Repealed)

Sec. 141. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-142 Corporate dissolution and tax payment (Repealed)

Sec. 142. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-143 Retention of taxpayer's books and records (Repealed)

Sec. 143. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-144 Disclosure of other tax returns and schedules (Repealed)

Sec. 144. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-145 False records prohibited (Repealed)

Sec. 145. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-146 Penalties for tax evasion (Repealed)

Sec. 146. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-147 Prosecution of violators (Repealed)

Sec. 147. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-148 Rulemaking powers; distribution of rules and forms (Repealed)

Sec. 148. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-149 Investigations by department; cooperation (Repealed)

Sec. 149. *(Repealed by Department of State Revenue; filed Oct 1, 1987, 1:30 pm: 11 IR 548)*

45 IAC 3.1-1-150 Exemptions from gross income tax

Authority: IC 6-8.1-3-3
Affected: IC 6-2.1; IC 6-3-2-2.8

Sec. 150. (a) Individuals, trusts, estates, and fiduciaries subject to the adjusted gross income tax, small business corporations exempt from adjusted gross income tax under IC 6-3-2-2.8, and partnerships are exempt from IC 6-2.1.

(b) However, if IC 6-3 is held inapplicable or invalid with respect to any of the taxpayers described in subsection (a), this exemption is revoked for the tax periods for which the tax is held invalid. *(Department of State Revenue; Reg 6-3-7-1(a)(010); filed Oct 15, 1979, 11:15 a.m.: 2 IR 1559; errata, 2 IR 1743; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 3.1-1-151 Taxation of partnerships with corporate members (Repealed)

Sec. 151. *(Repealed by Department of State Revenue; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 3.1-1-152 Taxation of partners of partnerships with corporate members (Repealed)

Sec. 152. *(Repealed by Department of State Revenue; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 3.1-1-153 Taxation of a corporate partner

Authority: IC 6-8.1-3-3
Affected: IC 6-3

Sec. 153. (a) A corporate partner's share of profit or loss from a partnership will be included in its federal taxable income and therefore generally subject to the same rules as any other adjusted gross income.

(b) If the corporate partner's activities and the partnership's activities constitute a unitary business under

established standards, disregarding ownership requirements, the business income of the unitary business attributable to Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the corporate partner and its share of the partnership's factors for any partnership year ending within or with the corporate partner's income year, with the following modifications:

(1) The value of property which is rented or leased by the corporate partner to the partnership or vice versa shall, with respect to the corporate partner, be excluded from the property factor of the partnership or eliminated to the extent of the corporate partner's interest in the partnership, whichever the case may be, in order to avoid duplication.

(2) Intercompany sales between the corporate partner and the partnership shall be eliminated from the corporate partner's sales factor as follows:

(A) Sales by the corporate partner to the partnership to the extent of the corporate partner's interest in the partnership.

(B) Sales by the partnership to the corporate partner not to exceed the corporate partner's interest in all partnership sales.

(c) If the corporate partner's activities and the partnership's activities do not constitute a unitary business under established standards, disregarding ownership requirements, the corporate partner's share of the partnership income attributable to Indiana shall be determined as follows:

(1) If the partnership derives business income from sources within and without Indiana, the business income derived from sources within Indiana shall be determined by a three (3) factor formula consisting of property, payroll, and sales of the partnership.

(2) If the partnership derives business income from sources entirely within Indiana, or entirely without Indiana, such income shall not be subject to formula apportionment.

(d) A partner's distributive share of income will be adjusted by the partner's proportionate share of the partnership's income that is exempt from taxation under the Constitution and statutes of the United States and by the partner's proportionate share of the partnership's deductions allowed or allowable under Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States or for taxes on property levied by any subdivision of any state of the United States.

(e) After determining the amount of business income attributable to Indiana under subsection (c), the corporate partner's distributive share of such income shall be added to the corporate partner's other business income apportioned to Indiana and its nonbusiness income, if any, allocable to Indiana, in determining the corporate partner's total taxable income. *(Department of State Revenue; 45 IAC 3.1-1-153; filed May 13, 1993, 5:00 p.m.: 16 IR 2346)*

45 IAC 3.1-1-154 Airport development zones

Authority: IC 6-8.1-3-3; IC 8-22-3.5-15
Affected: IC 6-3; IC 8-22-3.5-3; IC 36-3-1

Sec. 154. (a) A person who locates and operates a qualified airport development project in an airport development zone in a consolidated city shall not incur any adjusted gross income tax liability or supplemental net income tax liability as a result of the following activities:

(1) Locating the project in the consolidated city.

(2) The construction or completion of the project.

(3) The employment of personnel or the ownership or rental of property at or in conjunction with the project.

(4) The operation of the project or the activities at or in connection with the project.

In other words, the person's apportionment factor will not change due to the completion or operation of the project. As an example, assume that the project is an airline maintenance facility. At the completion of the project, the facility is worth six hundred million dollars ($600,000,000). The payroll from operating the facility is two hundred million dollars ($200,000,000). The person also realizes fifty million dollars ($50,000,000) in its first year of operations from maintenance performed on airplanes belonging to other parties and from the sale of airplane parts delivered within the airport development zone. These amounts would not appear in either the numerator or the denominator of their respective factors. Also, the person will not be subject to adjusted gross income tax or supplemental net income tax on

nonbusiness income earned by the person that is allocable to the airport development zone.

(b) As used in subsection (a), "qualified airport development project" has the same meaning as set forth in IC 8-22-3.5-3.

(c) As used in subsection (a), "airport development zone" means an airport development zone created under IC 8-22-3.5.

(d) As used in subsection (a), "consolidated city" means a city with a population of two hundred fifty thousand (250,000) or more that has become a consolidated city under IC 36-3-1.

(e) The exemption provided by subsection (a) is effective for a period of thirty-five (35) years beginning January 1, 1991. *(Department of State Revenue; 45 IAC 3.1-1-154; filed Feb 25, 1995, 4:30 p.m.: 18 IR 1810)*

Rule 2. Supplemental Net Income Tax

45 IAC 3.1-2-1 Corporations subject to tax

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-10; IC 6-3-7-1; IC 6-3-8-2; IC 27-1-18-2

Sec. 1. Corporations Taxable for Supplemental Corporate Net Income Tax. The Indiana Supplemental Net Income Tax is imposed upon the net income (See Reg. 6-3-8-2(b)(010) *[45 IAC 3.1-2-2]* of any "corporation" as defined in IC 6-3-1-10. This includes partnerships with corporate partners subject to Gross and Adjusted Gross Income Tax under IC 6-3-7-1(b). The tax is also imposed upon banks, trust companies, national banking associations, private banks, mutual savings banks, savings and loan associations, and domestic insurance companies organized under Indiana law, notwithstanding that such entities are exempt from Adjusted Gross Income Tax under IC 6-3-2-3(c) or (d) *[Repealed, as amended by P.L.79-1983, SECTION 2, and as also amended by P.L.82-1983, SECTION 5, by P.L.47-1984, SECTION 7(b).]*, or IC 27-1-18-2, or any other law of the State of Indiana. *(Department of State Revenue; Reg 6-3-8-2(a)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1560; errata, 2 IR 1743)*

45 IAC 3.1-2-2 Definition of net income

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3-2-2; IC 6-3-3-1; IC 6-3-8-2; IC 27-1-18-2

Sec. 2. "Net Income" Defined. "Net income" for Supplemental Net Income Tax purposes is a corporation's Adjusted Gross Income as defined in IC 6-3-1-3.5(b) derived from sources within the state as determined under IC 6-3-2-2(b), less the greater of:

(1) The taxpayer's adjusted gross income tax liability before the allowance for tax credits provided in IC 6-3-3-1(-7) (taxes withheld; taxes paid to other states, charitable contributions, etc.); or

(2) The taxpayer's gross income tax liability; or

(3) The taxpayer's premium tax as imposed by IC 27-1-18-2.

However, the net income of an Indiana insurance company is computed as follows for Supplemental Net Income Tax purposes:

(1) If the company is a life insurance company taxable under Internal Revenue Code section 801(a), begin with "life insurance company taxable income" as defined in Internal Revenue Code section 802(b); or, if it is a mutual insurance company taxable under Internal Revenue Code section 821(a), begin with mutual insurance company taxable income" as defined in Internal Revenue Code section 821(b); or if it is an insurance company taxable under Internal Revenue Code section 831, begin with "taxable income" as defined in Internal Revenue Code section 832; and

(2) Multiply this base amount by a fraction the numerator of which is the insurer's direct premium and annuity considerations for insurance on property or risks in Indiana, and the denominator of which is the insurer's direct premiums and annuity considerations for insurance on property or risks everywhere.

(3) Adjust this amount by subtracting the greater of

(a) The taxpayer's gross income tax liability.

(b) The taxpayer's premium tax liability.

If the above computation results in a negative figure, no supplemental net income tax is due and no carryback or carryforward loss is permitted. *(Department of State Revenue; Reg 6-3-8-2(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1560; errata, 2 IR 1743)*

45 IAC 3.1-2-3 Tax rate (Repealed)

Sec. 3. *(Repealed by Department of State Revenue; filed Feb 18, 1997, 4:00 p.m.: 20 IR 1722)*

45 IAC 3.1-2-4 Adoption of provisions of adjusted gross income tax; exceptions

Authority: IC 6-8.1-3-3
Affected: IC 6-3-2-2; IC 6-3-3-2; IC 6-3-3-5; IC 6-3-4-14; IC 6-3-8-5

Sec. 4. Adoption of Provisions of the Adjusted Gross Income Tax Act. The Supplemental Net Income Tax adopts by reference provisions in the Adjusted Gross Income Tax Act relating to the imposition, collection, payment, and administration of the adjusted gross income tax, except that the tax credit allowed under IC 6-3-3-2 and IC 6-3-3-5, and the exemption provisions of IC 6-3-2-3(c) and (d) *[Repealed, as amended by P.L.79-1983, SECTION 2, and as also amended by P.L.82-1983, SECTION 5, by P.L.47-1984, SECTION 7(b).]* are not applicable. Also, IC 6-3-2-2 shall not apply to the allocation and apportionment of the net income of domestic insurance companies. In the case of taxpayers exempt from the adjusted gross income tax but subject to supplemental net income tax, the taxpayer shall be entitled to file a consolidated supplemental net income tax return if it meets the requirements of IC 6-3-4-14 and Regulations 6-3-4-14(010) to 6-3-4-14(030) *[45 IAC 3.1-1-110 to 45 IAC 3.1-1-112]*. *(Department of State Revenue; Reg 6-3-8-5(010); filed Oct 15, 1979, 11:15 am: 2 IR 1560; errata, 2 IR 1743)*

Rule 3. County Adjusted Gross Income Tax

45 IAC 3.1-3-1 Persons and income subject to tax; administration

Authority: IC 6-8.1-3-3
Affected: IC 6-3-1-3.5; IC 6-3.5-1.1

Sec. 1. Definitions. The County Adjusted Gross Income Tax is imposed on individuals who are residents of adopting counties, and on individuals who are residents of non-adopting counties but who have their principal place of business or employment in an adopting county. For residents of adopting counties, the tax is imposed on adjusted gross income as defined in IC 6-3-1-3.5(a). However, residents of non-adopting counties and nonresidents of the state with a principal place of business or employment in an adopting county are taxable only on the adjusted gross income derived from the principal place of business or employment.

The county tax is administered by the Department of Revenue along with the individual Indiana Adjusted Gross Income Tax. This tax is distributed by the Department to the treasurers of all adopting counties. The county treasurers then certify an amount to each participating taxing unit within the county. *(Department of State Revenue; Reg 6-3.5-1-1(010); filed Oct 15, 1979, 11:15 am: 2 IR 1560; errata, 2 IR 1743)*

45 IAC 3.1-3-2 Tax rates; income subject to tax

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 2. Rate of Tax. Each county has the option of adopting one of three different rates applicable to county residents; one-half of one percent (1/2%), three-fourths of one percent (3/4%), or one percent (1%). The adopting counties must also assess all non-county residents who derive their principal source of income either from business or employment in the adopting county at the rate of one-fourth of one percent (1/4%) *[sic.]*. This 1/4% rate imposed on non-county residents is applicable only when the non-county resident's county of residence fails to adopt the CAGIT.

Income Subject to CAGIT:

Resident of Adopting County: If an individual's county of residence adopts the CAGIT his entire adjusted gross income will be subject to the county tax. The entire adjusted gross income will be subject to the CAGIT at the tax rate adopted in the individual's county of residence.

Resident of Non-Adopting County: If an individual resides in a non-adopting county but his principal place of business or employment is in an adopting county only the adjusted gross income derived from his principal place of business or employment will be subject to the CAGIT. The adjusted gross income derived in this county will be subject to the CAGIT at the 1/4% rate.

Out-of-State Residents: If an individual resides outside the State of Indiana but his principal place of work activity is in an Indiana adopting county only the adjusted gross income derived from the Indiana adopting county will be subject to the CAGIT. The adjusted gross income derived from the Indiana adopting county will be subject to the CAGIT at the 1/4% rate.

The tax rate of each adopting county is published annually by the Indiana Department of Revenue. *(Department of State Revenue; Reg 6-3.5-1-2(a)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1561; errata, 2 IR 1743)*

45 IAC 3.1-3-3 Persons and income subject to tax; exemptions; joint returns

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 3. Imposition of Tax. An individual is subject to county tax if he lives or works in an adopting county on January 1 of the tax year. A taxpayer's county of residence and principal work activity on this date alone determine whether he is subject to CAGIT for the entire year. If a taxpayer lives in an adopting county on January 1 and later in the year moves to a non-adopting county, he is subject to county tax on his state taxable income for the entire year. Conversely, if a taxpayer lives in a non-adopting county on January 1 and later in the year moves to an adopting county, he is not subject to county tax for that year.

If a taxpayer's county of residence on January 1 is a non-adopting county, but his county of principal work activity is an adopting county he must pay CAGIT on the income derived from his principal work activity for the entire year. Even though he may later begin working in a non-adopting county, he must pay county tax for the entire year on the income earned from his principal activity. However, if an individual neither lived nor worked in an adopting county on January 1, he is not subject to CAGIT on any part of his income even though his county of residence or principal work activity changes to an adopting county during the year.

An exception is in the case of an individual who as of January 1 works in an adopting county but is a nonresident of Indiana or who is a resident of Indiana on January 1 but moves out of Indiana during the tax year. He is subject to county tax only on income from principal work activity derived from Indiana sources; i.e., an individual who as of January 1 had his county of residence or principal work activity in an adopting Indiana county is not liable for CAGIT on income earned outside the state while not a resident of the state.

If an individual is subject to CAGIT on income from his principal work activity, the nonresident tax rate of 1/4% shall be applied against the taxpayer's adjusted gross income less exemptions derived from his principal work activity for the entire year. Adjusted gross income derived from principal work activity is defined as gross income from that activity less all deductions allowed per these regulations *[45 IAC 3.1]* against such income.

Husbands and wives are treated separately under CAGIT; i.e., each must determine their respective county of residence and county of principal work activity as of January 1 and in most cases will compute their respective county tax due, based on their separate adjusted gross income less allowable exemptions. Taxpayer and spouse will complete a joint county tax return only if they were both residents or working in the same adopting county as of January 1; this is true even for taxpayers who file a joint Indiana individual income tax return. In no case may a taxpayer or couple filing jointly take more than the number of exemptions allowed on their state return.

If a person files a joint return with his spouse and both are taxable for county option tax because they live in the same adopting county, they may combine their income and their exemptions regardless of whether only one spouse actually earns income.

If a person files a joint return with his spouse and only he or his spouse is taxable for county option tax then the person who is taxable may take all the exemptions claimed on the joint return except the other spouse's personal and

special income exemption.

If a person files a joint return and he is taxable at one rate on his income and his spouse is taxable at another rate on her income then the person with the most income should claim all the exemptions taken on the joint return except the other spouse's personal exemption and special income exemption. The other spouse should then take his or her personal and special income exemptions.

Residents of reciprocal agreement states subject only to CAGIT on income derived from an adopting county may claim the full number of exemptions without prorating.

Examples:

(1) Nonresident from Reciprocal State working part of the year in Indiana.

Fred Smith resides in Saginaw, Michigan, and as of January 1 operates a dental clinic in an Indiana adopting county (Elkhart). On March 1, he moves the clinic to Saginaw. During January and February he had Schedule C income of $10,000.00 in Elkhart County and from March through December had Schedule C income of $45,000.00 in Michigan. Of the $55,000.00 total income, he is liable for CAGIT only on the $10,000.00 earned in Elkhart County.

(2) Non-adopting county residents with one spouse working in an adopting county.

Thomas and Teresa Jones reside in County C (non-adopting) where he is employed. Mrs. Jones was employed as of January 1 in County D (adopting). During the tax year Mr. Jones earned $12,000.00 and Mrs. Jones earned $10,000.00. Their total state adjusted gross income is $22,000.00 but they are liable for county tax only on Mrs. Jones' $10,000.00. She is allowed her exemptions of $1,000.00, so she is liable for $22.50 CAGIT to County D; i.e., 1/4% of $9,000.00.

(3) Residents (husband and wife) working in same adopting counties but living in different counties on January 1.

Charles Thomas is a resident of County X (adopting) as of January 1 and during the year he marries Claire who was a resident of County Y (non-adopting) but as of January 1 each was employed in County X. Charles and Claire each earn $10,000.00 in County X during the year. Charlie owes CAGIT on his $10,000.00 income at the resident County X rate. Claire owes CAGIT on her $10,000.00 income at the nonresident rate of 1/4%. Their CAGIT liabilities must be determined separately because they were not residents of the same adopting county as of January 1.

(4) Resident of a non-adopting county working full and part-time in an adopting county.

Pete Franklin resides in County E (non-adopting) and on January 1 he is employed both full and part-time in County F (adopting). During the year he changes jobs and finds new full time employment in County E, maintaining his part-time job in County F. He is taxable on the income from both full time jobs during the entire year to County F at the nonresident rate. He will not, however, be subject on this part-time job because it was not his principal work activity.

(5) Resident of a non-adopting county working in an adopting county, and moving to the adopting county during the year.

David Smith resides in County K (non-adopting), works as an electrician in County O (adopting), has a part-time job in a liquor store in County O, and has rental property in County O, all as of January 1. On June 30 he moves to County O and on August 15 quits his job as an electrician and gets a job in County K as a bartender. His income is:

$10,000.00	as an electrician
8,000.00	as a bartender
3,000.00	as a liquor store clerk
4,000.00	rent
2,000.00	interest
$27,000.00	total income

He is subject to County O tax at the nonresident rate on the income from his principal work activity (electrician and bartender), or $18,000.00.

The computation of County Adjusted Gross Income Tax is to be completed on schedule CO-40, which is an attachment to the Individual Income Tax Return (form IT-40). The county tax computed from form CO-40 is to be carried to the designated area on form IT-40 or IT-40 PNR. *(Department of State Revenue; Reg 6-3.5-1-2(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1561; errata, 2 IR 1743)*

45 IAC 3.1-3-4 Credits

Authority: IC 6-8.1-3-3
Affected: IC 6-3-3-3; IC 6-3.5-1.1

Sec. 4. Credits Against County Tax. Credits against CAGIT may be taken only by Indiana residents subject to CAGIT at the county resident rate. Individuals who are nonresidents of Indiana or residents of an Indiana non-adopting county are in no instance allowed to claim these credits against their Indiana county tax liability. The credits are Credit for the Elderly and Credit for Taxes paid Localities Outside of Indiana.

Credit for the Elderly. If allowed credit under Section 37 of the Internal Revenue Code and each credit is taken on their Indiana return, resident county taxpayers may take credit for the elderly against their county liability. The credit allowable is a percentage of the state credit for the elderly as determined by the table below:

	Percent of State Credit for the Elderly Allowed as
County Rate (Resident)	County Credit for the Elderly
1/2%	25%
3/4%	37.5%
1%	50%

In no case, however, may the allowed credit exceed the county tax liability. If a taxpayer and spouse filing jointly and allowed a credit for the elderly are each subject to a different CAGIT rate, the percentage of state credit allowed as county credit shall be the average of the two.

Example:

Carol Brown, a White County (1% CAGIT rate) resident, is allowed a $30.00 credit for the elderly on her state return. She would compute her county credit for the elderly as follows:

(A) State credit for the elderly $30.00
(B) Percentage allowed against CAGIT for White County (form CO-40) 50%
(C) County credit for the elderly allowed (Multiply A. by B.) $15.00

A taxpayer subject to CAGIT may take a credit for county tax withheld on his Indiana Individual Income Tax Return (form IT-40). Unlike credit for the elderly and credit for taxes paid to localities outside of Indiana, credit for county tax withheld may not be taken on county schedule CO-40. *(Department of State Revenue; Reg 6-3.5-1-2(c)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1562; errata, 2 IR 1743)*

45 IAC 3.1-3-5 Duration and rescission of tax

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 5. Duration and Rescission of Tax. The CAGIT is in effect until rescinded by the county council. County council means any county council of a county, including a city county council of a consolidated first class city and county. The tax is rescinded by the county council adopting an ordinance to rescind between January 1 and June 1 of any year. If adopted, the rescission is effective July 1 of the year the ordinance is adopted. *(Department of State Revenue; Reg 6-3.5-1-6(010); filed Oct 15, 1979, 11:15 am: 2 IR 1563; errata, 2 IR 1743)*

45 IAC 3.1-3-6 Determination of county of residence

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 6. County of Residence. An individual's county of residence is determined as of January 1 of each year. A person's county of residence is determined in accordance with the following criteria:

(1) The county in which he maintains his home, if he has one and only one,

(2) or if 1) *[subsection (1) of this section]* does not apply, the county in which he is registered to vote,

(3) or if 1) and 2) *[subsections (1) and (2) of this section]* do not apply, the county in which he registers his personal automobile,

(4) or if 1), 2), and 3) *[subsections (1), (2) and (3) of this section]* do not apply, the county in which he spends the majority of his time during the taxable year.

Example:

On January 1, Harold resides and works in County A which is an adopting county. He is liable for county tax at County A's resident rate on his entire state taxable income.

The CAGIT applies against the entire adjusted gross income of an employee whose county of residence adopts the CAGIT. If the employee resides in a non-adopting county but has his principal place of employment in an adopting county, the CAGIT applies only to that adjusted gross income earned in the adopting county. *(Department of State Revenue; Reg 6-3.5-1-9(010); filed Oct 15, 1979, 11:15 am: 2 IR 1563; errata, 2 IR 1743)*

45 IAC 3.1-3-7 Determination of county of principal work activity

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 7. County of Principal Work Activity. An individual's county of principal (non-temporary) work activity is that county where the taxpayer receives the greatest percentage of his gross income from salaries, wages, commissions, fees, or other income of this type. If an individual is self-employed the county of principal work activity is that county where the individual's principal place of business is located. If an individual has two or more sources of income from two or more different counties, principal source will be evidenced by the percent of income received from each county and the percent of time spent in each county. If an individual resides outside the State of Indiana but his principal place of work activity is in an Indiana adopting county only the adjusted gross income derived from that county is subject to CAGIT. Reciprocal agreements between Indiana and other states do not affect a taxpayer's liability under CAGIT. Adjusted gross income derived from the Indiana adopting county is subject to CAGIT at the rate of 1/4%.

Example:

Harry Parker resides and has a part-time job in County Y which is not an adopting county. He has a full time job in County Z which does adopt CAGIT and which renders the larger portion of his income. His county of principal work activity is County Z, and he is subject to CAGIT at the rate of 1/4%. Conversely, if the full time job was in County Y and the part-time job in County Z, his county of principal work activity would be County Y and he would not be subject to CAGIT.

Residency and Principal Place of Business or Employment

For the 1974 calendar year and all subsequent years, a person's residency and principal place of business or employment will be determined on January 1 of each year. Therefore, if a county adopts CAGIT prior to June 1, 1978 (to be effective on July 1, 1978) a person's residence and principal place of business or employment for the entire 1978 calendar year will be determined according to his residence and principal place of business or employment as of January 1, 1978. Such person's residency and principal place of business or employment for subsequent calendar years will be determined as of January 1, of each year. *(Department of State Revenue; Reg 6-3.5-1-9(020); filed Oct 15, 1979, 11:15 am: 2 IR 1563; errata, 2 IR 1743)*

45 IAC 3.1-3-8 Application of adjusted gross income tax provisions

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 8. Application of Adjusted Gross Income Tax Provisions. Except where expressly stated, all provisions of the Adjusted Gross Income Tax Act are applicable to the imposition, collection, and administration of County Adjusted Gross Income Tax. *(Department of State Revenue; Reg 6-3.5-1-10(010); filed Oct 15, 1979, 11:15 am: 2 IR 1564; errata, 2 IR 1743)*

45 IAC 3.1-3-9 Reciprocity agreements with out-of-state authorities

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 9. Reciprocal Agreements Between Local Governments. County Councils of adopting counties are allowed to enter into reciprocity agreements with other taxing authorities outside the State of Indiana. This measure will allow adopting counties to collect the CAGIT from out-of-state employers of Indiana residents.

Reciprocity agreements must coincide with calendar years and a certified copy of the agreement must be sent to the Department of Revenue. The agreement passed by majority vote of the County Council must have been previously approved by the Department of Revenue. *(Department of State Revenue; Reg 6-3.5-1-11(a)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1564; errata, 2 IR 1743)*

45 IAC 3.1-3-10 Credit for taxes paid to out-of-state local governments

Authority: IC 6-8.1-3-3
Affected: IC 6-3.5-1.1

Sec. 10. Credit for Taxes Paid to Localities Outside of Indiana. Taxpayers subject to county tax at the resident rate may take a credit against CAGIT liability for taxes paid to localities outside of Indiana. The credit is limited to the amount of tax paid or the county rate times the amount of income that was taxed by the other locality or to the amount of CAGIT due, whichever is the least. This does not apply to income taxed by any state, but only to income taxed by any subdivision of any state, such as a city or county, outside of Indiana.

The credit will be allowed upon production of satisfactory evidence of payment of tax to the out-of-state subdivision. A copy of the tax return filed with the other locality or a W-2 statement indicating such payment must be attached to the Indiana return.*

Example:

Herbert, a Randolph County (1% CAGIT rate) resident, earned $10,000.00 in Indiana and $3,000.00 in Flint, Michigan. He paid $45.00 to the city of Flint, Michigan. He would compute his credit as follows:

(A) Income taxed by locality outside of Indiana	$3,000.00
(B) Resident county tax rate	1% (.01)
(C) Allowable county credit (form CO-40: multiply A. by B.)	$30.00

Herbert is allowed a $30.00 credit since it is less than the $45.00 tax paid to the city of Flint.

*The credit will not be allowed if the laws of such city or county provide for a credit to the taxpayer for the amount of CAGIT payable.

Note: County Credit for Taxes Paid to Localities Outside of Indiana and County Credit for the Elderly (See Regulation 6-3.5-1-2(c)(010) *[45 IAC 3.1-3-4]*, are the only credits to be entered on the County Option Schedule CO-40, and may not exceed the amount of CAGIT liability. *(Department of State Revenue; Reg 6-3.5-1-11(b)(010); filed Oct 15, 1979, 11:15 am: 2 IR 1564; errata, 2 IR 1743)*

*